



INTERNATIONAL LAW
FELLOWSHIP PROGRAMME

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INTERNATIONAL HUMANITARIAN LAW
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Codification Division of the United Nations Office of Legal Affairs

INTERNATIONAL HUMANITARIAN LAW
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3. Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 1949
For text, see *The Geneva Conventions of August 12, 1949*, International Committee of the Red Cross, p. 51
4. Geneva Convention (III) relative to the Treatment of Prisoners of War, 1949
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RECOMMENDED READINGS (*electronic format*)

Legal instruments and documents

1. Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, The Hague, 1907
2. Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, Geneva, 1925

4. Report of the Secretary-General to the Security Council on the protection of civilians in armed conflict, S/2001/331, 30 March 2001
5. Report of the Secretary-General to the Security Council on the protection of civilians in armed conflict, S/2002/1300, 26 November 2002
6. Report of the Secretary-General to the Security Council on the protection of civilians in armed conflict, S/2004/431, 28 May 2004
7. Report of the Secretary-General on the protection of civilians in armed conflict, S/2005/740, 28 November 2005
8. Report of the Secretary-General on the protection of civilians in armed conflict, S/2007/643, 28 October 2007
9. Report of the Secretary-General on the protection of civilians in armed conflict, S/2009/277, 29 May 2009
10. Report of the Secretary-General on the protection of civilians in armed conflict, S/2010/579, 11 November 2010

COURSE OUTLINE - INTERNATIONAL HUMANITARIAN LAW

Course description

The course will examine the content and application of International Humanitarian Law (IHL), also known as the “law of armed conflict” or the “law of war”.

This course will provide a basic knowledge of IHL in the context of past and present wars and conflicts.

It will focus on the protection of people and objects in international and non-international armed conflicts.

Objectives

At the conclusion of the course, students should be able to:

- Display an understanding of the system of international humanitarian law, the interpretation of IHL treaties and the identification of customary IHL.
- Apply the principles of IHL to contemporary issues of concern to the international community.

Course content

The course will focus on:

1. Definition and elements of IHL
2. Sources and principles of IHL
3. Beginning and end of armed conflicts and their geographical limits
4. International and non-international armed conflicts
5. Principle of distinction: combatants and civilians, military objectives and civilian objects
6. Protection of persons: wounded and sick, POWs, civilians and children
7. Situations resulting in the loss of protection including direct participation in hostilities
8. The challenges of relating IHL to terrorism, targeted killings, and robotic and cyber warfare

PRECIS of INTERNATIONAL HUMANITARIAN LAW

K.J. RIORDAN

International Humanitarian Law (IHL) is also known as the “**law of armed conflict**” (LOAC) and “**the law of war**”. IHL overlaps with **arms control** and **international human rights law** and forms the basis of a large part of **international criminal law**.

What IHL does:

The purpose of IHL is to:

- limit as much as possible the suffering, loss and damage caused by armed conflict;
- protect persons who do not take a direct part in the conflict, in particular:
 - the wounded, sick and shipwrecked;
 - persons deprived of their liberty, i.e. prisoners of war (PW), retained personnel, internees and detainees; and
 - civilians;
- facilitate the restoration of peace.

What IHL does not do:

What IHL cannot do is:

- stop people fighting each other;
- stop people suffering in war.

Not every bad thing that happens in war is a breach of IHL

IHL is sometimes criticised as “the legitimization of violence”. Not everything that shocks the conscience of mankind is banned by IHL. This is a law which prohibits unnecessary suffering – not suffering *per se*. It outlaws incidental civilian casualties if they are disproportionate, but permits them otherwise. It allows combatants to kill enemy combatants even in circumstances that don’t seem fair. It allows states at war to interfere with many rights and freedoms that people enjoy in peacetime when this is demanded by military necessity.

The briefest possible history of IHL

Although legal, spiritual and philosophical rules constraining the use of armed force have existed since ancient times, the practise of warfare was historically brutal and often merciless. In the middle of the 19th century humane individuals in different parts of the world set out to constrain the means and methods of warfare and to impose rules protecting the victims of war. Those people include Henri Dunant, Tsar Alexander II and Francis Lieber. After each major war that followed, further treaties were developed in the hope that the atrocities just witnessed could be prevented in the event of further conflict. Whereas once the laws and custom of war were sparse and simply

expressed, now there is a very large and detailed body of law indeed. Why (and how) did this happen?

We should also consider whether the complexity of IHL is, itself, a challenge to compliance.

The world of IHL is divided into three types of people...

As far as IHL is concerned the world is divided into three types of people:

- **Combatants** i.e. members of the armed forces of states involved in armed conflict. They have the complete legal right to participate in hostilities - they may attack opposing forces and military objectives; but they also face the liability to be attacked by enemy combatants.
- **Non-combatant members of the armed forces** i.e. medical and religious personnel. They have a limited right to defend themselves and their patients against unlawful attack, but no general right to attack opposing forces. They may not be attacked if and for so long as they do not directly participate in hostilities
- **Civilians** i.e. people who are not combatants. They do not have a legal right to directly participate in hostilities. They may not attack opposing forces or military objectives; and they may not be attacked if and for so long as they do not directly participate in hostilities.

Aside from the class of non-combatant members of the armed forces every person affected by armed conflict is either a combatant or a civilian. There is no gap between the two which allows inhumane treatment.

If only the modern battlefield was that simple.

The modern battlefield, however, is seldom a contest between two armies of combatants.

Civilians taking a direct part in hostilities are the major players in modern conflict. Of the twenty-two conflicts active in the world right now all involve civilians against combatants, or civilians against civilians.

Insurgents, freedom fighters, terrorists, saboteurs, *mujahedeen*, mercenaries, PMSC, *jihadis*, volunteers, unlawful combatants, unprivileged belligerents, very bad people, etc. These terms whether pejorative or laudatory do not define the legal status of civilians who take a direct part in hostilities.

By taking a direct part in hostilities, civilians lose their immunity from attack, but they do not become combatants as a result. They can be tried for their actions. The distinction cannot be used to deny humane treatment to any person regardless of status. Being an “unlawful combatant” does not deprive a person of protection under IHL.

The world of IHL is divided into two types of conflict...

The formulation of LOAC is still to a large degree divided between:

- a. international armed conflicts; and
- b. non-international armed conflict.

The specific rules governing the rights and obligations of person affected by armed conflict must be decided in accordance with IHL applicable to either an international armed conflict or to non-

international armed conflict. There is no intermediate ground between these two situations by which protected persons can be deprived of their rights.

If only the modern battlefield was that simple (again).

Non-international conflicts are not only more common than international ones but also bloodier. It is no longer appropriate to treat such conflicts as an issue of minor interest. While obligations applicable to international conflict are more numerous and detailed, provisions applicable to non-international conflict are written in broader terms. Distinguishing between the two types of conflict is of diminishing practical value. "What is inhumane, and consequently proscribed, in international wars, cannot but be inhumane and inadmissible in civil strife." A non-international conflict may become internationalised because of the actions of outside states. An international armed conflict may become non-international when insurgencies arise after the conflict is thought to have ended. Because of the difficulty of differentiation between the two types of warfare it is now common to refer to a "spectrum of conflict".

The world of IHL is divided into two areas of application... but not really

Some authorities still insist that the rules protecting the victims of war are called "Geneva Law" and that those governing weapons and methods of warfare are called "Hague Law" and that the two are quite separate. Since at least 1977 these two areas of law have merged and intermingled and many treaties now cover both aspects.

The Basic Principles

- **Military necessity** - a State involved in armed conflict is justified in using such lawful force as is necessary to bring about the submission of the enemy at the earliest possible moment and with the least possible cost to itself in terms of lives and resources. A State also has the right to defend its unity and territorial integrity by all legitimate means.
- **Humanity** - not even armed conflict releases mankind from the most basic of obligations in respect of fellow human beings.¹ The principle forbids the infliction of suffering or destruction not necessary for the accomplishment of legitimate military purposes.
- **Proportionality** - a balance must be struck between military necessity and humanity. This principle works in two related but distinct ways:
 - as a consideration in the formulation of rules of IHL (for example in drafting a treaty seeking to ban or restrict the use of a particular weapon).
 - as an element of how some rules of IHL are applied (for example those rules requiring precautions in favour of civilians when launching attacks).

The fact that some civilian casualties or damage will occur from an attack on a military objective, although always regrettable in humanitarian terms, does not render an attack unlawful. Only when likely cost in civilian lives and civilian property damage outweighs the genuinely anticipated overall military advantage from the attack, is IHL breached. Proportionality in this sense protects civilians it does not protect combatants.

¹ This fundamental obligation is expressed in **UN Charter** Preamble which reaffirms faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small.

This “balancing act” does not permit the breach of rules that are absolute. For example torture is banned absolutely even if the value of the information which might be gained is very great.

- **Distinction** – IHL requires all parties to distinguish between:
 - **Objects and People open to attack** – i.e. Military objectives, combatants, persons taking a direct part in hostilities; and
 - **Objects and People immune from attack** – i.e. civilians, the civilian population and civilian objects, persons *hors de combat* (i.e. wounded, sick, shipwrecked or deprived of liberty); cultural property, schools, mosques, churches, monuments; medical personnel, facilities, vehicles ships and aircraft; journalists; civil defence workers; peacekeepers.
- **Non-discrimination.** The rights, obligations, and protections of IHL apply to all persons affected by armed conflict regardless of who they may be. IHL binds all parties to a conflict - that one side may be an aggressor, invader or occupier does not entitle the aggrieved state or its people not to apply the law. IHL is binding even if the opposing force engages in breaches. It must be applied in favour of all victims of armed conflict without adverse distinction based on race, colour, religion or faith, sex, birth, ethnic origin, political opinion or wealth or any similar criteria.

Twenty nine rules of IHL that should never be far from our minds:

We should all understand and respect the rules of IHL derived from customary and / or conventional law which:

1. prohibit the use of chemical weapons, bacteriological weapons, poison, expanding bullets, exploding bullets, anti-personnel mines,² blinding laser weapons, non-detectable fragments, and cluster munitions³;
2. restrict the use of anti-vehicle mines, sea-mines, torpedoes, booby-traps / other devices, and incendiary weapons;
3. prohibit treachery (perfidy) and false truces;
4. prohibit means and methods of warfare which are inherently indiscriminate or are of a nature to cause superfluous injury or unnecessary suffering, or widespread, long term and severe damage to the natural environment;
5. prohibit environmental modification as a method of warfare;
6. require distinction between combatants and civilians, and between military objectives and civilian objects;
7. require avoidance and minimisation of incidental loss of civilian life, injury to civilians or damage to civilian property;
8. relate to the placement of military objectives to protect the civilians and civilian objects against the dangers resulting from military operations;
9. prohibit indiscriminate attacks;
10. prohibit reprisals against protected persons and objects;
11. prohibit the conduct of operations on the basis that there shall be no survivors (no quarter);
12. protect cultural property;
13. prohibit starvation of civilians as a method of warfare;

² For parties to that treaty

³ For parties to that treaty

14. restrict attacks on installations containing dangerous forces;
15. require humane treatment of all persons not taking part in military operations, including civilians and persons placed hors de combat by reason of surrender, sickness, wounds or detention;
16. prohibit violence to life, murder, cruel treatment, torture, mutilation, corporal punishment, collective punishment, reprisals, taking of hostages, rape, enforced prostitution, sexual assault, humiliation and degrading treatment, enslavement and pillage of protected persons;
17. protect women and children from unlawful attack, in particular against rape, enforced prostitution or any other form of indecent assault;
18. require humane treatment of any person detained by a force, whether they are members of the armed forces of a party to the conflict or any other person detained for any reason;
19. require respect, protection and treatment of the wounded, sick or shipwrecked of both sides without discrimination, and those from the civilian population wherever practicable;
20. relate to the search for and identification of the wounded, sick, shipwrecked, and the dead;
21. prohibit attacks on medical establishments or mobile medical units;
22. require respect and protection of medical personnel and religious personnel;
23. protect the transportation of the wounded and sick and medical equipment;
24. protect the Red Cross, Red Crescent and Red Crystal emblems;
25. relate to the right of the families to know about the fate of their sick, wounded and deceased relatives and facilitate the work of the ICRC Central Tracing Agency; and
26. protect to the work of humanitarian relief;
27. prohibit the use of child soldiers;
28. prohibit mercenary activity;
29. require measures for the protection of civilians from the effects of explosive remnants of war and cluster munition remnants.

**Declaration Renouncing the Use, in Time of War,
of Explosive Projectiles Under 400 Grammes Weight,
Saint Petersburg, 1868**

Declaration Renouncing the Use, in Time of War, of Explosive Projectiles Under 400 Grammes Weight. Saint Petersburg, 29 November / 11 December 1868.

Full text

On the proposition of the Imperial Cabinet of Russia, an International Military Commission having assembled at St. Petersburg in order to examine the expediency of forbidding the use of certain projectiles in time of war between civilized nations, and that Commission having by common agreement fixed the technical limits at which the necessities of war ought to yield to the requirements of humanity, the Undersigned are authorized by the orders of their Governments to declare as follows:

Considering:

That the progress of civilization should have the effect of alleviating as much as possible the calamities of war;

That the only legitimate object which States should endeavour to accomplish during war is to weaken the military forces of the enemy;

That for this purpose it is sufficient to disable the greatest possible number of men;

That this object would be exceeded by the employment of arms which uselessly aggravate the sufferings of disabled men, or render their death inevitable;

That the employment of such arms would, therefore, be contrary to the laws of humanity;

The Contracting Parties engage mutually to renounce, in case of war among themselves, the employment by their military or naval troops of any projectile of a weight below 400 grammes, which is either explosive or charged with fulminating or inflammable substances.

They will invite all the States which have not taken part in the deliberations of the International Military Commission assembled at St. Petersburg by sending Delegates thereto, to accede to the present engagement.

This engagement is compulsory only upon the Contracting or Acceding Parties thereto in case of war between two or more of themselves; it is not applicable to non-Contracting Parties, or Parties who shall not have acceded to it.

It will also cease to be compulsory from the moment when, in a war between Contracting or Acceding Parties, a non-Contracting Party or a non-Acceding Party shall join one of the belligerents.

The Contracting or Acceding Parties reserve to themselves to come hereafter to an understanding whenever a precise proposition shall be drawn up in view of future improvements which science may effect in the armament of troops, in order to maintain the principles which they have established, and to conciliate the necessities of war with the laws of humanity.

Done at St. Petersburg, 29 November (11 December) 1868.

(Here follow signatures)

I N T E R N A T I O N A L H U M A N I T A R I A N L A W

**Convention on Prohibitions or Restrictions on the Use of
Certain Conventional Weapons which may be deemed to be
Excessively Injurious or to have Indiscriminate Effects, 1980**

Protocol on Non-Detectable Fragments (Protocol I), 1980

**Protocol on Prohibitions or Restrictions on the Use of
Mines, Booby-Traps and Other Devices (Protocol II), 1980**

**Protocol on Prohibitions or Restrictions on the Use of
Incendiary Weapons (Protocol III), 1980**



No. 22495

Treaty Series

*Treaties and international agreements
registered
or filed and recorded
with the Secretariat of the United Nations*

Convention on prohibitions or restrictions on the use of certain conventional weapons which may be deemed to be excessively injurious or to have indiscriminate effects (with protocols). Concluded at Geneva on 10 October 1980

*Authentic texts: Arabic, Chinese, English, French, Russian and Spanish.
Registered ex officio on 2 December 1983.*

VOLUME 1342

MULTILATERAL

Recueil des Traités

*Traités et accords internationaux
enregistrés
ou classés et inscrits au répertoire
au Secrétariat de l'Organisation des Nations Unies*

Convention sur l'interdiction ou la limitation de l'emploi de certaines armes classiques qui peuvent être considérées comme produisant des effets traumatiques excessifs ou comme frappant sans discrimination (avec protocoles). Conclue à Genève le 10 octobre 1980

*Textes authentiques : arabe, chinois, anglais, français, russe et espagnol.
Enregistrée d'office le 2 décembre 1983.*

United Nations • Nations Unies
New York, 1992

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CONVENTION¹ ON PROHIBITIONS OR RESTRICTIONS ON THE USE OF CERTAIN CONVENTIONAL WEAPONS WHICH MAY BE DEEMED TO BE EXCESSIVELY INJURIOUS OR TO HAVE INDISCRIMINATE EFFECTS

The High Contracting Parties,

Recalling that every State has the duty, in conformity with the Charter of the United Nations, to refrain in its international relations from the threat or use of force against the sovereignty, territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations,

Further recalling the general principle of the protection of the civilian population against the effects of hostilities,

Basing themselves on the principle of international law that the right of the parties to an armed conflict to choose methods or means of warfare is not unlimited, and on the principle that prohibits the employment in armed conflicts of weapons, projectiles and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering,

Also recalling that it is prohibited to employ methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment,

¹ The Convention, including the three Protocols, came into force on 2 December 1983 in respect of the following States, i.e., six months after the date of deposit of the twentieth instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations, in accordance with article 5 (1) and (3):

State	Date of deposit of the instrument of ratification, acceptance (A) or accession (B) Protocols I, II and III	State	Date of deposit of the instrument of ratification, acceptance (A) or accession (B) Protocols I, II and III
Austria	14 March 1983	Japan	9 June 1982
Bulgaria	15 October 1982	Laos People's Democratic Republic	3 January 1983 ^a
Byelorussian Soviet Socialist Republic	23 June 1982	Mexico	11 February 1982
China	7 April 1982	Mongolia	8 June 1983
Czechoslovakia	31 August 1982	Poland	2 June 1982
Denmark	7 July 1982	Sweden	7 July 1982
Ecuador	4 May 1982	Switzerland	20 August 1982
Finland	8 April 1982	Ukrainian Soviet Socialist Republic	23 June 1982
German Democratic Republic	20 July 1982	Union of Soviet Socialist Republics	10 June 1982
Hungary	14 June 1982	Yugoslavia	24 May 1983

Subsequently, the Convention came into force for the following State six months after the date on which it deposited its instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations, in accordance with article 5 (2):

State	Date of deposit of the instrument of ratification and of acceptance of Protocols I, II and III
Norway	7 June 1983

(With effect from 7 December 1983.)

Confirming their determination that in cases not covered by this Convention and its annexed Protocols or by other international agreements, the civilian population and the combatants shall at all times remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience,

Desiring to contribute to international détente, the ending of the arms race and the building of confidence among States, and hence to the realization of the aspiration of all peoples to live in peace,

Recognizing the importance of pursuing every effort which may contribute to progress towards general and complete disarmament under strict and effective international control,

Reaffirming the need to continue the codification and progressive development of the rules of international law applicable in armed conflict,

Wishing to prohibit or restrict further the use of certain conventional weapons and believing that the positive results achieved in this area may facilitate the main talks on disarmament with a view to putting an end to the production, stockpiling and proliferation of such weapons,

Emphasizing the desirability that all States become parties to this Convention and its annexed Protocols, especially the militarily significant States,

Bearing in mind that the General Assembly of the United Nations and the United Nations Disarmament Commission may decide to examine the question of a possible broadening of the scope of the prohibitions and restrictions contained in this Convention and its annexed Protocols,

Further bearing in mind that the Committee on Disarmament may decide to consider the question of adopting further measures to prohibit or restrict the use of certain conventional weapons,

Have agreed as follows:

Article 1. SCOPE OF APPLICATION

This Convention and its annexed Protocols shall apply in the situations referred to in Article 2 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims,¹ including any situation described in paragraph 4 of Article 1 of Additional Protocol I to these Conventions.²

Article 2. RELATIONS WITH OTHER INTERNATIONAL AGREEMENTS

Nothing in this Convention or its annexed Protocols shall be interpreted as detracting from other obligations imposed upon the High Contracting Parties by international humanitarian law applicable in armed conflict.

Article 3. SIGNATURE

This Convention shall be open for signature by all States at United Nations Headquarters in New York for a period of twelve months from 10 April 1981.

Article 4. RATIFICATION, ACCEPTANCE, APPROVAL OR ACCESSION

1. This Convention is subject to ratification, acceptance or approval by the Signatories. Any State which has not signed this Convention may accede to it.

2. The instruments of ratification, acceptance, approval or accession shall be deposited with the Depositary.

¹ United Nations, *Treaty Series*, vol. 75, p. 2.

² *Ibid.*, vol. 1125, p. 3.

3. Expressions of consent to be bound by any of the Protocols annexed to this Convention shall be optional for each State, provided that at the time of the deposit of its instrument of ratification, acceptance or approval of this Convention or of accession thereto, that State shall notify the Depositary of its consent to be bound by any two or more of these Protocols.
4. At any time after the deposit of its instrument of ratification, acceptance or approval of this Convention or of accession thereto, a State may notify the Depositary of its consent to be bound by any annexed Protocol by which it is not already bound.
5. Any Protocol by which a High Contracting Party is bound shall for that Party form an integral part of this Convention.

Article 5. ENTRY INTO FORCE

1. This Convention shall enter into force six months after the date of deposit of the twentieth instrument of ratification, acceptance, approval or accession.
2. For any State which deposits its instrument of ratification, acceptance, approval or accession after the date of the deposit of the twentieth instrument of ratification, acceptance, approval or accession, this Convention shall enter into force six months after the date on which that State has deposited its instrument of ratification, acceptance, approval or accession.
3. Each of the Protocols annexed to this Convention shall enter into force six months after the date by which twenty States have notified their consent to be bound by it in accordance with paragraph 3 or 4 of Article 4 of this Convention.
4. For any State which notifies its consent to be bound by a Protocol annexed to this Convention after the date by which twenty States have notified their consent to be bound by it, the Protocol shall enter into force six months after the date on which that State has notified its consent so to be bound.

Article 6. DISSEMINATION

The High Contracting Parties undertake, in time of peace as in time of armed conflict, to disseminate this Convention and those of its annexed Protocols by which they are bound as widely as possible in their respective countries and, in particular, to include the study thereof in their programmes of military instruction, so that those instruments may become known to their armed forces.

Article 7. TREATY RELATIONS UPON ENTRY INTO FORCE OF THIS CONVENTION

1. When one of the parties to a conflict is not bound by an annexed Protocol, the parties bound by this Convention and that annexed Protocol shall remain bound by them in their mutual relations.
2. Any High Contracting Party shall be bound by this Convention and any Protocol annexed thereto which is in force for it, in any situation contemplated by Article 1, in relation to any State which is not a party to this Convention or bound by the relevant annexed Protocol, if the latter accepts and applies this Convention or the relevant Protocol, and so notifies the Depositary.
3. The Depositary shall immediately inform the High Contracting Parties concerned of any notification received under paragraph 2 of this Article.
4. This Convention, and the annexed Protocols by which a High Contracting Party is bound, shall apply with respect to an armed conflict against that High Contracting Party of the type referred to in Article 1, paragraph 4, of Additional Protocol I to the Geneva Convention of 12 August 1949 for the Protection of War Victims:

- (a) Where the High Contracting Party is also a party to Additional Protocol I and an authority referred to in Article 96, paragraph 3, of that Protocol has undertaken to apply the Geneva Conventions and Additional Protocol I in accordance with Article 96, paragraph 3, of the said Protocol, and undertakes to apply this Convention and the relevant annexed Protocols in relation to that conflict, or
- (b) Where the High Contracting Party is not a party to Additional Protocol I and an authority of the type referred to in subparagraph (a) above accepts and applies the obligations of the Geneva Conventions and of this Convention and the relevant annexed Protocols in relation to that conflict. Such an acceptance and application shall have in relation to that conflict the following effects:
- (i) The Geneva Conventions and this Convention and its relevant annexed Protocols are brought into force for the parties to the conflict with immediate effect;
 - (ii) The said authority assumes the same rights and obligations as those which have been assumed by a High Contracting Party to the Geneva Conventions, this Convention and its relevant annexed Protocols; and
 - (iii) The Geneva Conventions, this Convention and its relevant annexed Protocols are equally binding upon all parties to the conflict.

The High Contracting Party and the authority may also agree to accept and apply the obligations of Additional Protocol I to the Geneva Conventions on a reciprocal basis.

Article 8. REVIEW AND AMENDMENTS

1. (a) At any time after the entry into force of this Convention any High Contracting Party may propose amendments to this Convention or any annexed Protocol by which it is bound. Any proposal for an amendment shall be communicated to the Depositary, who shall notify it to all the High Contracting Parties and shall seek their views on whether a conference should be convened to consider the proposal. If a majority, that shall not be less than eighteen of the High Contracting Parties so agree, he shall promptly convene a conference to which all High Contracting Parties shall be invited. States not parties to this Convention shall be invited to the conference as observers.
 - (b) Such a conference may agree upon amendments which shall be adopted and shall enter into force in the same manner as this Convention and the annexed Protocols, provided that amendments to this Convention may be adopted only by the High Contracting Parties and that amendments to a specific annexed Protocol may be adopted only by the High Contracting Parties which are bound by that Protocol.
2. (a) At any time after the entry into force of this Convention any High Contracting Party may propose additional protocols relating to other categories of conventional weapons not covered by the existing annexed protocols. Any such proposal for an additional protocol shall be communicated to the Depositary, who shall notify it to all the High Contracting Parties in accordance with subparagraph 1 (a) of this Article. If a majority, that shall not be less than eighteen of the High Contracting Parties so agree, the Depositary shall promptly convene a conference to which all States shall be invited.
 - (b) Such a conference may agree, with the full participation of all States represented at the conference, upon additional protocols which shall be adopted in the same manner as this Convention, shall be annexed thereto and shall enter into force as provided in paragraphs 3 and 4 of Article 5 of this Convention.

3. (a) If, after a period of ten years following the entry into force of this Convention, no conference has been convened in accordance with subparagraph 1 (a) or 2 (a) of this Article, any High Contracting Party may request the Depositary to convene a conference to which all High Contracting Parties shall be invited to review the scope and operation of this Convention and the Protocols annexed thereto and to consider any proposal for amendments of this Convention or of the existing Protocols. States not parties to this Convention shall be invited as observers to the conference. The conference may agree upon amendments which shall be adopted and enter into force in accordance with subparagraph 1 (b) above.

(b) At such conference consideration may also be given to any proposal for additional protocols relating to other categories of conventional weapons not covered by the existing annexed Protocols. All States represented at the conference may participate fully in such consideration. Any additional protocols shall be adopted in the same manner as this Convention, shall be annexed thereto and shall enter into force as provided in paragraphs 3 and 4 of Article 5 of this Convention.

(c) Such a conference may consider whether provision should be made for the convening of a further conference at the request of any High Contracting Party if, after a similar period to that referred to in subparagraph 3 (a) of this Article, no conference has been convened in accordance with subparagraph 1 (a) or 2 (a) of this Article.

Article 9. DENUNCIATION

1. Any High Contracting Party may denounce this Convention or any of its annexed Protocols by so notifying the Depositary.

2. Any such denunciation shall only take effect one year after receipt by the Depositary of the notification of denunciation. If, however, on the expiry of that year the denouncing High Contracting Party is engaged in one of the situations referred to in Article 1, the Party shall continue to be bound by the obligations of this Convention and of the relevant annexed Protocols until the end of the armed conflict or occupation and, in any case, until the termination of operations connected with the final release, repatriation or re-establishment of the persons protected by the rules of international law applicable in armed conflict, and in the case of any annexed Protocol containing provisions concerning situations in which peace-keeping, observation or similar functions are performed by United Nations forces or missions in the area concerned, until the termination of those functions.

3. Any denunciation of this Convention shall be considered as also applying to all annexed Protocols by which the denouncing High Contracting Party is bound.

4. Any denunciation shall have effect only in respect of the denouncing High Contracting Party.

5. Any denunciation shall not affect the obligations already incurred, by reason of an armed conflict, under this Convention and its annexed Protocols by such denouncing High Contracting Party in respect of any act committed before this denunciation becomes effective.

Article 10. DEPOSITARY

1. The Secretary-General of the United Nations shall be the Depositary of this Convention and of its annexed Protocols.

2. In addition to his usual functions, the Depositary shall inform all States of:

(a) Signatures affixed to this Convention under Article 3;

(b) Deposits of instruments of ratification, acceptance or approval or accession to this Convention deposited under Article 4;

(c) Notifications of consent to be bound by annexed Protocols under Article 4;

(d) The dates of entry into force of this Convention and of each of its annexed Protocols under Article 5; and

(e) Notifications of denunciation received under Article 9 and their effective date.

Article 11. AUTHENTIC TEXTS

The original of this Convention with the annexed Protocols, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Depositary, who shall transmit certified true copies thereof to all States.

PROTOCOL ON NON-DETECTABLE FRAGMENTS

(PROTOCOL I)

It is prohibited to use any weapon the primary effect of which is to injure by fragments which in the human body escape detection by X-rays.

PROTOCOL ON PROHIBITIONS OR RESTRICTIONS ON THE USE OF MINES, BOOBY-TRAPS AND OTHER DEVICES

(PROTOCOL II)

Article 1. MATERIAL SCOPE OF APPLICATION

This Protocol relates to the use on land of the mines, booby-traps and other devices defined herein, including mines laid to interdict beaches, waterway crossings or river crossings, but does not apply to the use of anti-ship mines at sea or in inland waterways.

Article 2. DEFINITIONS

For the purpose of this Protocol:

1. "Mine" means any munition placed under, on or near the ground or other surface area and designed to be detonated or exploded by the presence, proximity or contact of a person or vehicle, and "remotely delivered mine" means any mine so defined delivered by artillery, rocket, mortar or similar means or dropped from an aircraft.

2. "Booby-trap" means any device or material which is designed, constructed or adapted to kill or injure and which functions unexpectedly when a person disturbs or approaches an apparently harmless object or performs an apparently safe act.

3. "Other devices" means manually-emplaced munitions and devices designed to kill, injure or damage and which are actuated by remote control or automatically after a lapse of time.

4. "Military objective" means, so far as objects are concerned, any object which by its nature, location, purpose or use makes an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.

5. "Civilian objects" are all objects which are not military objectives as defined in paragraph 4.

6. "Recording" means a physical, administrative and technical operation designed to obtain, for the purpose of registration in the official records, all available information facilitating the location of minefields, mines and booby-traps.

Article 3. GENERAL RESTRICTIONS ON THE USE OF MINES, BOOBY-TRAPS AND OTHER DEVICES

1. This Article applies to:
 - (a) Mines;
 - (b) Booby-traps; and
 - (c) Other devices.
2. It is prohibited in all circumstances to direct weapons to which this Article applies, either in offence, defence or by way of reprisals, against the civilian population as such or against individual civilians.
3. The indiscriminate use of weapons to which this Article applies is prohibited. Indiscriminate use is any placement of such weapons:
 - (a) Which is not on, or directed against, a military objective; or
 - (b) Which employs a method or means of delivery which cannot be directed at a specific military objective; or
 - (c) Which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.
4. All feasible precautions shall be taken to protect civilians from the effects of weapons to which this Article applies. Feasible precautions are those precautions which are practicable or practically possible taking into account all circumstances ruling at the time, including humanitarian and military considerations.

Article 4. RESTRICTIONS ON THE USE OF MINES OTHER THAN REMOTELY DELIVERED MINES, BOOBY-TRAPS AND OTHER DEVICES IN POPULATED AREAS

1. This Article applies to:
 - (a) Mines other than remotely delivered mines;
 - (b) Booby-traps; and
 - (c) Other devices.
2. It is prohibited to use weapons to which this Article applies in any city, town, village or other area containing a similar concentration of civilians in which combat between ground forces is not taking place or does not appear to be imminent, unless either:
 - (a) They are placed on or in the close vicinity of a military objective belonging to or under the control of an adverse party; or
 - (b) Measures are taken to protect civilians from their effects, for example, the posting of warning signs, the posting of sentries, the issue of warnings or the provision of fences.

Article 5. RESTRICTIONS ON THE USE OF REMOTELY DELIVERED MINES

1. The use of remotely delivered mines is prohibited unless such mines are only used within an area which is itself a military objective or which contains military objectives, and unless:
 - (a) Their location can be accurately recorded in accordance with Article 7 (1) (a); or
 - (b) An effective neutralizing mechanism is used on each such mine, that is to say, a self-actuating mechanism which is designed to render a mine harmless or cause it to destroy itself when it is anticipated that the mine will no longer serve the military purpose for which it was placed in position, or a remotely-controlled mechanism which is designed to render harmless or destroy a mine when the mine no longer serves the military purpose for which it was placed in position.
2. Effective advance warning shall be given of any delivery or dropping of remotely delivered mines which may affect the civilian population, unless circumstances do not permit.

Article 6. PROHIBITION ON THE USE OF CERTAIN BOOBY-TRAPS

1. Without prejudice to the rules of international law applicable in armed conflict relating to treachery and perfidy, it is prohibited in all circumstances to use:
 - (a) Any booby-trap in the form of an apparently harmless portable object which is specifically designed and constructed to contain explosive material and to detonate when it is disturbed or approached; or
 - (b) Booby-traps which are in any way attached to or associated with:
 - (i) Internationally recognized protective emblems, signs or signals;
 - (ii) Sick, wounded or dead persons;
 - (iii) Burial or cremation sites or graves;
 - (iv) Medical facilities, medical equipment, medical supplies or medical transportations;
 - (v) Children's toys or other portable objects or products specially designed for the feeding, health, hygiene, clothing or education of children;
 - (vi) Food or drink;
 - (vii) Kitchen utensils or appliances except in military establishments, military locations or military supply depots;
 - (viii) Objects clearly of a religious nature;
 - (ix) Historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples;
 - (x) Animals or their carcasses.
2. It is prohibited in all circumstances to use any booby-trap which is designed to cause superfluous injury or unnecessary suffering.

Article 7. RECORDING AND PUBLICATION OF THE LOCATION OF MINEFIELDS, MINES AND BOOBY-TRAPS

1. The parties to a conflict shall record the location of:
 - (a) All pre-planned minefields laid by them; and
 - (b) All areas in which they have made large-scale and pre-planned use of booby-traps.
2. The parties shall endeavour to ensure the recording of the location of all other minefields, mines and booby-traps which they have laid or placed in position.
3. All such records shall be retained by the parties who shall:
 - (a) Immediately after the cessation of active hostilities:
 - (i) Take all necessary and appropriate measures, including the use of such records, to protect civilians from the effects of minefields, mines and booby-traps; and either
 - (ii) In cases where the forces of neither party are in the territory of the adverse party, make available to each other and to the Secretary-General of the United Nations all information in their possession concerning the location of minefields, mines and booby-traps in the territory of the adverse party; or
 - (iii) Once complete withdrawal of the forces of the parties from the territory of the adverse party has taken place, make available to the adverse party and to the Secretary-General of the United Nations all information in their possession concerning the location of minefields, mines and booby-traps in the territory of the adverse party;
 - (b) When a United Nations force or mission performs functions in any area, make available to the authority mentioned in Article 8 such information as is required by that Article;
 - (c) Whenever possible, by mutual agreement, provide for the release of information concerning the location of minefields, mines and booby-traps, particularly in agreements governing the cessation of hostilities.

Article 8. PROTECTION OF UNITED NATIONS FORCES AND MISSIONS FROM THE EFFECTS OF MINEFIELDS, MINES AND BOOBY-TRAPS

1. When a United Nations force or mission performs functions of peace-keeping, observation or similar functions in any area, each party to the conflict shall, if requested by the head of the United Nations force or mission in that area, as far as it is able:
 - (a) Remove or render harmless all mines or booby-traps in that area;
 - (b) Take such measures as may be necessary to protect the force or mission from the effects of minefields, mines and booby-traps while carrying out its duties; and
 - (c) Make available to the head of the United Nations force or mission in that area, all information in the party's possession concerning the location of minefields, mines and booby-traps in that area.
2. When a United Nations fact-finding mission performs functions in any area, any party to the conflict concerned shall provide protection to that mission except where, because of the size of such mission, it cannot adequately provide such protection. In that case it shall make available to the head of the mission the information in its possession concerning the location of minefields, mines and booby-traps in that area.

Article 9. INTERNATIONAL CO-OPERATION IN THE REMOVAL OF MINEFIELDS, MINES AND BOOBY-TRAPS

After the cessation of active hostilities, the parties shall endeavour to reach agreement, both among themselves and, where appropriate, with other States and with international organizations, on the provision of information and technical and material assistance — including, in appropriate circumstances, joint operations — necessary to remove or otherwise render ineffective minefields, mines and booby-traps placed in position during the conflict.

TECHNICAL ANNEX TO THE PROTOCOL ON PROHIBITIONS OR RESTRICTIONS ON THE USE OF MINES, BOOBY-TRAPS AND OTHER DEVICES (PROTOCOL II)

Guidelines on Recording

Whenever an obligation for the recording of the location of minefields, mines and booby-traps arises under the Protocol, the following guidelines shall be taken into account.

1. With regard to pre-planned minefields and large-scale and pre-planned use of booby-traps:
 - (a) Maps, diagrams or other records should be made in such a way as to indicate the extent of the minefield or booby-trapped area; and
 - (b) The location of the minefield or booby-trapped area should be specified by relation to the co-ordinates of a single reference point and by the estimated dimensions of the area containing mines and booby-traps in relation to that single reference point.
2. With regard to other minefields, mines and booby-traps laid or placed in position:
 1. In so far as possible, the relevant information specified in paragraph 1 above should be recorded so as to enable the areas containing minefields, mines and booby-traps to be identified.

PROTOCOL ON PROHIBITIONS OR RESTRICTIONS ON THE USE OF INCENDIARY WEAPONS

(PROTOCOL III)

Article 1. DEFINITIONS

For the purpose of this Protocol:

1. "Incendiary weapon" means any weapon or munition which is primarily designed to set fire to objects or to cause burn injury to persons through the action of flame, heat,

or a combination thereof, produced by a chemical reaction of a substance delivered on the target.

- (a) Incendiary weapons can take the form of, for example, flame throwers, fougasses, shells, rockets, grenades, mines, bombs and other containers of incendiary substances.
- (b) Incendiary weapons do not include:
 - (i) Munitions which may have incidental incendiary effects, such as illuminants, tracers, smoke or signalling systems;
 - (ii) Munitions designed to combine penetration, blast or fragmentation effects with an additional incendiary effect, such as armour-piercing projectiles, fragmentation shells, explosive bombs and similar combined-effects munitions in which the incendiary effect is not specifically designed to cause burn injury to persons, but to be used against military objectives, such as armoured vehicles, aircraft and installations or facilities.
2. "Concentration of civilians" means any concentration of civilians, be it permanent or temporary, such as in inhabited parts of cities, or inhabited towns or villages, or as in camps or columns of refugees or evacuees, or groups of nomads.
3. "Military objective" means, so far as objects are concerned, any object which by its nature, location, purpose or use makes an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.
4. "Civilian objects" are all objects which are not military objectives as defined in paragraph 3.
5. "Feasible precautions" are those precautions which are practicable or practically possible taking into account all circumstances ruling at the time, including humanitarian and military considerations.

Article 2. PROTECTION OF CIVILIANS AND CIVILIAN OBJECTS

1. It is prohibited in all circumstances to make the civilian population as such, individual civilians or civilian objects the object of attack by incendiary weapons.
2. It is prohibited in all circumstances to make any military objective located within a concentration of civilians the object of attack by air-delivered incendiary weapons.
3. It is further prohibited to make any military objective located within a concentration of civilians the object of attack by means of incendiary weapons other than air-delivered incendiary weapons, except when such military objective is clearly separated from the concentration of civilians and all feasible precautions are taken with a view to limiting the incendiary effects to the military objective and to avoiding, and in any event to minimizing, incidental loss of civilian life, injury to civilians and damage to civilian objects.
4. It is prohibited to make forests or other kinds of plant cover the object of attack by incendiary weapons except when such natural elements are used to cover, conceal or camouflage combatants or other military objectives, or are themselves military objectives.

Protocol on Blinding Laser Weapons (Protocol IV), 1995



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New York, 2001

No. 22495. Multilateral

CONVENTION ON PROHIBITIONS OR RESTRICTIONS ON THE USE OF CERTAIN CONVENTIONAL WEAPONS WHICH MAY BE DEEMED TO BE EXCESSIVELY INJURIOUS OR TO HAVE INDISCRIMINATE EFFECTS (WITH PROTOCOLS I, II AND III). GENEVA, 10 OCTOBER 1980¹

No. 22495. Multilatéral

CONVENTION SUR L'INTERDICTION OU LA LIMITATION DE L'EMPLOI DE CERTAINES ARMES CLASSIQUES QUI PEUVENT ÊTRE CONSIDÉRÉES COMME PRODUISANT DES EFFETS TRAUMATIQUES EXCESSIFS OU COMME FRAPPANT SANS DISCRIMINATION (AVEC PROTOCOLES I, II ET III). GENÈVE, 10 OCTOBRE 1980¹

ADDITIONAL PROTOCOL TO THE CONVENTION ON PROHIBITIONS OR RESTRICTIONS ON THE USE OF CERTAIN CONVENTIONAL WEAPONS WHICH MAY BE DEEMED TO BE EXCESSIVELY INJURIOUS OR TO HAVE INDISCRIMINATE EFFECTS (PROTOCOL IV, ENTITLED PROTOCOL ON BLINDING LASER WEAPONS). VIENNA, 13 OCTOBER 1995

PROTOCOLE ADDITIONNEL À LA CONVENTION SUR L'INTERDICTION OU LA LIMITATION DE L'EMPLOI DE CERTAINES ARMES CLASSIQUES QUI PEUVENT ÊTRE CONSIDÉRÉES COMME PRODUISANT DES EFFETS TRAUMATIQUES EXCESSIFS OU COMME FRAPPANT SANS DISCRIMINATION (PROTOCOLE IV INTITULÉ PROTOCOLE RELATIF AUX ARMES À LASER AVEUGLANTES). VIENNE, 13 OCTOBRE 1995

Entry into force : 30 July 1998, in accordance with article 2 of the Additional Protocol

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Authentic texts : Arabic, Chinese, English, French, Russian and Spanish *
Registration with the Secretariat of the United Nations : ex officio, 30 July 1998

Textes authentiques : arabe, chinois, anglais, français, russe et espagnol
Enregistrement auprès du Secrétariat des Nations Unies : d'office, 30 juillet 1998

* For the Spanish text of the Protocol, See Corrigenda at the back of the volume

1. United Nations, *Treaty Series*, Vol. 1342, I-22495 — Nations Unies, *Recueil des Traités*, Vol. 1342, I-22495

[ENGLISH TEXT — TEXTE ANGLAIS]

ADDITIONAL PROTOCOL TO THE CONVENTION ON PROHIBITIONS OR RESTRICTIONS ON THE USE OF CERTAIN CONVENTIONAL WEAPONS WHICH MAY BE DEEMED TO BE EXCESSIVELY INJURIOUS OR TO HAVE INDISCRIMINATE EFFECTS

ENTRY INTO FORCE

This Protocol shall enter into force as provided in paragraphs 3 and 4 of Article 5 of the Convention.

Article 2.

Article 1.

ADDITIONAL PROTOCOL

The following protocol shall be annexed to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects ("the Convention") as Protocol IV:

"PROTOCOL ON BLINDING LASER WEAPONS (PROTOCOL IV)

Article 1

It is prohibited to employ laser weapons specifically designed, as their sole combat function or as one of their combat functions, to cause permanent blindness to unenhanced vision, that is to the naked eye or to the eye with corrective eyeglass devices. The High Contracting Parties shall not transfer such weapons to any State or non-State entity.

Article 2.

In the employment of laser systems, the High Contracting Parties shall take all feasible precautions to avoid the incidence of permanent blindness to unenhanced vision. Such precautions shall include training of their armed forces and other practical measures.

Article 3.

Blinding as an incidental or collateral effect of the legitimate military employment of laser systems, including laser systems used against optical equipment, is not covered by the prohibition of this Protocol.

Article 4.

For the purpose of this Protocol "permanent blindness" means irreversible and uncorrectable loss of vision which is seriously disabling with no prospect of recovery. Serious disability is equivalent to visual acuity of less than 20/200 Snellen measured using both eyes."

**Protocol on Prohibitions or Restrictions on the Use of
Mines, Booby-Traps and Other Devices as Amended on 3
May 1996 (Protocol II as amended on 3 May 1996)**



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PROTOCOL ON PROHIBITIONS OR RESTRICTIONS ON THE USE OF MINES, BOOBY-TRAPS AND OTHER DEVICES AS AMENDED ON 3 MAY 1996 (PROTOCOL II AS AMENDED ON 3 MAY 1996) ANNEXED TO THE CONVENTION ON PROHIBITIONS OR RESTRICTIONS ON THE USE OF CERTAIN CONVENTIONAL WEAPONS WHICH MAY BE DEEMED TO BE EXCESSIVELY INJURIOUS OR TO HAVE INDISCRIMINATE EFFECTS. GENEVA, 3 MAY 1996

PROTOCOLE SUR L'INTERDICTION OU LA LIMITATION DE L'EMPLOI DES MINES, PIÈGES ET AUTRES DISPOSITIFS, TEL QU'IL A ÉTÉ MODIFIÉ LE 3 MAI 1996 (PROTOCOLE II, TEL QU'IL A ÉTÉ MODIFIÉ LE 3 MAI 1996) ANNEXÉ À LA CONVENTION SUR L'INTERDICTION OU LA LIMITATION DE L'EMPLOI DE CERTAINES ARMES CLASSIQUES QUI PEUVENT ÊTRE CONSIDÉRÉES COMME PRODUISANT DES EFFETS TRAUMATIQUES EXCESSIFS OU COMME FRAPPANT SANS DISCRIMINATION. GENÈVE, 3 MAI 1996

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Textes authentiques : arabe, chinois, anglais, français, russe et espagnol

Registration with the Secretariat of the United Nations : ex officio, 3 December 1998

Enregistrement auprès du Secrétariat des Nations Unies : d'office, 3 décembre 1998

[ENGLISH TEXT — TEXTE ANGLAIS]

PROTOCOL ON PROHIBITIONS OR RESTRICTIONS ON THE USE OF MINES, BOOBY-TRAPS AND OTHER DEVICES AS AMENDED ON 3 MAY 1996 (PROTOCOL II AS AMENDED ON 3 MAY 1996) ANNEXED TO THE CONVENTION ON PROHIBITIONS OR RESTRICTIONS ON THE USE OF CERTAIN CONVENTIONAL WEAPONS WHICH MAY BE DEEMED TO BE EXCESSIVELY INJURIOUS OR TO HAVE INDISCRIMINATE EFFECTS

ARTICLE 1. AMENDED PROTOCOL

The Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-traps and Other Devices (Protocol II), annexed to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects ("the Convention") is hereby amended. The text of the Protocol as amended will read as follows:

"Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-traps and Other Devices as Amended on 3 May 1996 (Protocol II as amended on 3 May 1996)"

Article 1. Scope of application

1. This Protocol relates to the use on land of the mines, booby-traps and other devices, defined herein, including mines laid to interdict beaches, waterway crossings or river crossings, but does not apply to the use of anti-ship mines at sea or in inland waterways.
2. This Protocol shall apply, in addition to situations referred to in Article 1 of this Convention, to situations referred to in Article 3 common to the Geneva Conventions of 12 August 1949. This Protocol shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts.
3. In case of armed conflicts not of an international character occurring in the territory of one of the High Contracting Parties, each party to the conflict shall be bound to apply the prohibitions and restrictions of this Protocol.
4. Nothing in this Protocol shall be invoked for the purpose of affecting the sovereignty of a State or the responsibility of the Government, by all legitimate means, to maintain or re-establish law and order in the State or to defend the national unity and territorial integrity of the State.
5. Nothing in this Protocol shall be invoked as a justification for intervening, directly or indirectly, for any reason whatever, in the armed conflict or in the internal or external affairs of the High Contracting Party in the territory of which that conflict occurs.

6. The application of the provisions of this Protocol to parties to a conflict, which are not High Contracting Parties that have accepted this Protocol, shall not change their legal status or the legal status of a disputed territory, either explicitly or implicitly.

Article 2. Definitions

For the purpose of this Protocol:

1. "Mine" means a munition placed under, on or near the ground or other surface area and designed to be exploded by the presence, proximity or contact of a person or vehicle.
2. "Remotely-delivered mine" means a mine not directly emplaced but delivered by artillery, missile, rocket, mortar, or similar means, or dropped from an aircraft. Mines delivered from a land-based system from less than 500 metres are not considered to be "remotely delivered", provided that they are used in accordance with Article 5 and other relevant Articles of this Protocol.
3. "Anti-personnel mine" means a mine primarily designed to be exploded by the presence, proximity or contact of a person and that will incapacitate, injure or kill one or more persons.
4. "Booby-trap" means any device or material which is designed, constructed, or adapted to kill or injure, and which functions unexpectedly when a person disturbs or approaches an apparently harmless object or performs an apparently safe act.
5. "Other devices" means manually-emplaced munitions and devices including improvised explosive devices designed to kill, injure or damage and which are actuated manually, by remote control or automatically after a lapse of time.
6. "Military objective" means, so far as objects are concerned, any object which by its nature, location, purpose or use makes an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.
7. "Civilian objects" are all objects which are not military objectives as defined in paragraph 6 of this Article.
8. "Minefield" is a defined area in which mines have been emplaced and "mined area" is an area which is dangerous due to the presence of mines. "Phoney minefield" means an area free of mines that simulates a minefield. The term "minefield" includes phoney mine fields.
9. "Recording" means a physical, administrative and technical operation designed to obtain, for the purpose of registration in official records, all available information facilitating the location of minefields, mined areas, mines, booby-traps and other devices.
10. "Self-destruction mechanism" means an incorporated or externally attached automatically-functioning mechanism which secures the destruction of the munition into which it is incorporated or to which it is attached.
11. "Self-neutralization mechanism" means an incorporated automatically-functioning mechanism which renders inoperable the munition into which it is incorporated.

12. "Self-deactivating" means automatically rendering a munition inoperable by means of the irreversible exhaustion of a component, for example, a battery, that is essential to the operation of the munition.

13. "Remote control" means control by commands from a distance.

14. "Anti-handling device" means a device intended to protect a mine and which is part of, linked to, attached to or placed under the mine and which activates when an attempt is made to tamper with the mine.

15. "Transfer" involves, in addition to the physical movement of mines into or from national territory, the transfer of title to and control over the mines, but does not involve the transfer of territory containing emplaced mines.

Article 3. General restrictions on the use of mines, booby-traps and other devices

1. This Article applies to:

- (a) Mines;
- (b) Booby-traps; and
- (c) Other devices.

2. Each High Contracting Party or party to a conflict is, in accordance with the provisions of this Protocol, responsible for all mines, booby-traps, and other devices employed by it and undertakes to clear, remove, destroy or maintain them as specified in Article 10 of this Protocol.

3. It is prohibited in all circumstances to use any mine, booby-trap or other device which is designed or of a nature to cause superfluous injury or unnecessary suffering.

4. Weapons to which this Article applies shall strictly comply with the standards and limitations specified in the Technical Annex with respect to each particular category.

5. It is prohibited to use mines, booby-traps or other devices which employ a mechanism or device specifically designed to detonate the munition by the presence of commonly available mine detectors as a result of their magnetic or other non-contact influence during normal use in detection operations.

6. It is prohibited to use a self-deactivating mine equipped with an anti-handling device that is designed in such a manner that the anti-handling device is capable of functioning after the mine has ceased to be capable of functioning.

7. It is prohibited in all circumstances to direct weapons to which this Article applies, either in offence, defence or by way of reprisals, against the civilian population as such or against individual civilians or civilian objects.

8. The indiscriminate use of weapons to which this Article applies is prohibited. Indiscriminate use is any placement of such weapons:

(a) Which is not on, or directed against, a military objective. In case of doubt as to whether an object which is normally dedicated to civilian purposes, such as a place of worship, a house or other dwelling or a school, is being used to make an effective contribution to military action, it shall be presumed not to be so used;

(b) Which employs a method or means of delivery which cannot be directed at a specific military objective; or

(c) Which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.

9. Several clearly separated and distinct military objectives located in a city, town, village or other area containing a similar concentration of civilians or civilian objects are not to be treated as a single military objective.

10. All feasible precautions shall be taken to protect civilians from the effects of weapons to which this Article applies. Feasible precautions are those precautions which are practicable or practically possible taking into account all circumstances ruling at the time, including humanitarian and military considerations. These circumstances include, but are not limited to:

- (a) The short- and long-term effect of mines upon the local civilian population, for the duration of the mine field;
- (b) Possible measures to protect civilians (for example, fencing, signs, warning and monitoring);
- (c) The availability and feasibility of using alternatives; and
- (d) The short- and long-term military requirements for a minefield.

11. Effective advance warning shall be given of any emplacement of mines, booby-traps and other devices which may affect the civilian population, unless circumstances do not permit.

Article 4. Restrictions on the use of anti-personnel mines

It is prohibited to use anti-personnel mines which are not detectable, as specified in paragraph 2 of the Technical Annex.

Article 5. Restrictions on the use of anti-personnel mines other than remotely-delivered mines

1. This Article applies to anti-personnel mines other than remotely-delivered mines.

2. It is prohibited to use weapons to which this Article applies which are not in compliance with the provisions on self-destruction and self-deactivation in the Technical Annex, unless:

(a) Such weapons are placed within a perimeter-marked area which is monitored by military personnel and protected by fencing or other means, to ensure the effective exclusion of civilians from the area. The marking must be of a distinct and durable character and must at least be visible to a person who is about to enter the perimeter-marked area; and

(b) Such weapons are cleared before the area is abandoned, unless the area is turned over to the forces of another State which accept responsibility for the maintenance of the protections required by this Article and the subsequent clearance of those weapons.

3. A party to a conflict is relieved from further compliance with the provisions of sub-paragraphs 2 (a) and 2 (b) of this Article only if such compliance is not feasible due to forcible loss of control of the area as a result of enemy military action, including situations where direct enemy military action makes it impossible to comply. If that party regains control of the area, it shall resume compliance with the provisions of sub-paragraphs 2 (a) and 2 (b) of this Article.

4. If the forces of a party to a conflict gain control of an area in which weapons to which this Article applies have been laid, such forces shall, to the maximum extent feasible, maintain and, if necessary, establish the protections required by this Article until such weapons have been cleared.

5. All feasible measures shall be taken to prevent the unauthorized removal, defacement, destruction or concealment of any device, system or material used to establish the perimeter of a perimeter-marked area.

6. Weapons to which this Article applies which propel fragments in a horizontal arc of less than 90 degrees and which are placed on or above the ground may be used without the measures provided for in sub-paragraph 2 (a) of this Article for a maximum period of 72 hours, if:

- (a) They are located in immediate proximity to the military unit that replaced them; and
- (b) The area is monitored by military personnel to ensure the effective exclusion of civilians.

Article 6. Restrictions on the use of remotely-delivered mines

1. It is prohibited to use remotely-delivered mines unless they are recorded in accordance with sub-paragraph 1(b) of the Technical Annex.

2. It is prohibited to use remotely-delivered anti-personnel mines which are not in compliance with the provisions on self-destruction and self-deactivation in the Technical Annex.

3. It is prohibited to use remotely-delivered mines other than anti-personnel mines, unless, to the extent feasible, they are equipped with an effective self-destruction or self-neutralization mechanism and have a back-up self-deactivation feature, which is designed so that the mine will no longer function as a mine when the mine no longer serves the military purpose for which it was placed in position.

4. Effective advance warning shall be given of any delivery or dropping of remotely delivered mines which may affect the civilian population, unless circumstances do not permit.

Article 7. Prohibitions on the use of booby-traps and other devices

1. Without prejudice to the rules of international law applicable in armed conflict relating to treachery and perfidy, it is prohibited in all circumstances to use booby-traps and other devices which are in any way attached to or associated with:

- (a) Internationally recognized protective emblems, signs or signals;

- (b) Sick, wounded or dead persons;
- (c) Burial or cremation sites or graves;
- (d) Medical facilities, medical equipment, medical supplies or medical transportation;
- (e) Children's toys or other portable objects or products specially designed for the feeding, health, hygiene, clothing or education of children;
- (f) Food or drink;
- (g) Kitchen utensils or appliances except in military establishments, military locations or military supply depots;
- (h) Objects clearly of a religious nature;
- (i) Historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples; or
- (j) Animals or their carcasses.

2. It is prohibited to use booby-traps or other devices in the form of apparently harmless portable objects which are specifically designed and constructed to contain explosive material.

3. Without prejudice to the provisions of Article 3, it is prohibited to use weapons to which this Article applies in any city, town, village or other area containing a similar concentration of civilians in which combat between ground forces is not taking place or does not appear to be imminent, unless either:

- (a) They are placed on or in the close vicinity of a military objective; or
- (b) Measures are taken to protect civilians from their effects, for example, the posting of warning sentries, the issuing of warnings or the provision of fences.

Article 8. Transfers

1. In order to promote the purposes of this Protocol, each High Contracting Party:

- (a) Undertakes not to transfer any mine the use of which is prohibited by this Protocol;
- (b) Undertakes not to transfer any mine to any recipient other than a State or a State agency authorized to receive such transfers;

(c) Undertakes to exercise restraint in the transfer of any mine the use of which is restricted by this Protocol. In particular, each High Contracting Party undertakes not to transfer any anti-personnel mines to States which are not bound by this Protocol, unless the recipient State agrees to apply this Protocol; and

(d) Undertakes to ensure that any transfer in accordance with this Article takes place in full compliance, by both the transferring and the recipient State, with the relevant provisions of this Protocol and the applicable norms of international humanitarian law.

2. In the event that a High Contracting Party declares that it will defer compliance with specific provisions on the use of certain mines, as provided for in the Technical Annex, sub-paragraph 1 (a) of this Article shall however apply to such mines.

3. All High Contracting Parties, pending the entry into force of this Protocol, will refrain from any actions which would be inconsistent with sub-paragraph 1 (a) of this Article.

Article 9. Recording and use of information on minefields, mined areas, mines, booby-traps and other devices

1. All information concerning minefields, mined areas, mines, booby-traps and other devices shall be recorded in accordance with the provisions of the Technical Annex.
2. All such records shall be retained by the parties to a conflict, who shall, without delay after the cessation of active hostilities, take all necessary and appropriate measures, including the use of such information, to protect civilians from the effects of minefields, mined areas, mines, booby-traps and other devices in areas under their control.

At the same time, they shall also make available to the other party or parties to the conflict and to the Secretary-General of the United Nations all such information in their possession concerning minefields, mined areas, mines, booby-traps and other devices laid by them in areas no longer under their control; provided, however, subject to reciprocity, where the forces of a party to a conflict are in the territory of an adverse party, either party may withhold such information from the Secretary-General and the other party, to the extent that security interests require such withholding, until neither party is in the territory of the other. In the latter case, the information withheld shall be disclosed as soon as those security interests permit. Wherever possible, the parties to the conflict shall seek, by mutual agreement, to provide for the release of such information at the earliest possible time in a manner consistent with the security interests of each party.

3. This Article is without prejudice to the provisions of Articles 10 and 12 of this Protocol.

Article 10. Removal of mine fields, mined areas, mines, booby-traps and other devices and international cooperation

1. Without delay after the cessation of active hostilities, all minefields, mined areas, mines, booby-traps and other devices shall be cleared, removed, destroyed or maintained in accordance with Article 3 and paragraph 2 of Article 5 of this Protocol.
2. High Contracting Parties and parties to a conflict bear such responsibility with respect to minefields, mined areas, mines, booby-traps and other devices in areas under their control.
3. With respect to minefields, mined areas, mines, booby-traps and other devices laid by a party in areas over which it no longer exercises control, such party shall provide to the party in control of the area pursuant to paragraph 2 of this Article, to the extent permitted by such party, technical and material assistance necessary to fulfil such responsibility.
4. At all times necessary, the parties shall endeavour to reach agreement, both among themselves and, where appropriate, with other States and with international organizations, on the provision of technical and material assistance, including, in appropriate circumstances, the undertaking of joint operations necessary to fulfil such responsibilities.

Article 11. Technological cooperation and assistance

1. Each High Contracting Party undertakes to facilitate and shall have the right to participate in the fullest possible exchange of equipment, material and scientific and technological information concerning the implementation of this Protocol and means of mine clearance. In particular, High Contracting Parties shall not impose undue restrictions on the provision of mine clearance equipment and related technological information for humanitarian purposes.
2. Each High Contracting Party undertakes to provide information to the database on mine clearance established within the United Nations System, especially information concerning various means and technologies of mine clearance, and lists of experts, expert agencies or national points of contact on mine clearance.
3. Each High Contracting Party in a position to do so shall provide assistance for mine clearance through the United Nations System, other international bodies or on a bilateral basis, or contribute to the United Nations Voluntary Trust Fund for Assistance in Mine Clearance.
4. Requests by High Contracting Parties for assistance, substantiated by relevant information, may be submitted to the United Nations, to other appropriate bodies or to other States. These requests may be submitted to the Secretary-General of the United Nations, who shall transmit them to all High Contracting Parties and to relevant international organizations.
5. In the case of requests to the United Nations, the Secretary-General of the United Nations, within the resources available to the Secretary-General of the United Nations, may take appropriate steps to assess the situation and, in cooperation with the requesting High Contracting Party, determine the appropriate provision of assistance in mine clearance or implementation of the Protocol. The Secretary-General may also report to High Contracting Parties on any such assessment as well as on the type and scope of assistance required.
6. Without prejudice to their constitutional and other legal provisions, the High Contracting Parties undertake to cooperate and transfer technology to facilitate the implementation of the relevant prohibitions and restrictions set out in this Protocol.
7. Each High Contracting Party has the right to seek and receive technical assistance, where appropriate, from another High Contracting Party on specific relevant technology, other than weapons technology, as necessary and feasible, with a view to reducing any period of deferral for which provision is made in the Technical Annex.

Article 12. Protection from the effects of minefields, mined areas, mines, booby-traps and other devices

1. Application
 - (a) With the exception of the forces and missions referred to in sub-paragraph 2(a)(i) of this Article, this Article applies only to missions which are performing functions in an area with the consent of the High Contracting Party on whose territory the functions are performed.

- (b) The application of the provisions of this Article to parties to a conflict which are not High Contracting Parties shall not change their legal status or the legal status of a disputed territory, either explicitly or implicitly.
- (c) The provisions of this Article are without prejudice to existing international humanitarian law, or other international instruments as applicable, or decisions by the Security Council of the United Nations, which provide for a higher level of protection to personnel functioning in accordance with this Article.
2. Peace-keeping and certain other forces and mission
- (a) This paragraph applies to:
- (i) Any United Nations force or mission performing peace-keeping, observation or similar functions in any area in accordance with the Charter of the United Nations; and
- (ii) Any mission established pursuant to Chapter VIII of the Charter of the United Nations and performing its functions in the area of a conflict.
- (b) Each High Contracting Party or party to a conflict, if so requested by the head of a force or mission to which this paragraph applies, shall:
- (i) So far as it is able, take such measures as are necessary to protect the force or mission from the effects of mines, booby-traps and other devices in any area under its control;
- (ii) If necessary in order effectively to protect such personnel, remove or render harmless, so far as it is able, all mines, booby-traps and other devices in that area; and
- (iii) Inform the head of the force or mission of the location of all known minefields, mined areas, mines, booby-traps and other devices in the area in which the force or mission is performing its functions and, so far as is feasible, make available to the head of the force or mission all information in its possession concerning such minefields, mined areas, mines, booby-traps and other devices.
3. Humanitarian and fact-finding missions of the United Nations System
- (a) This paragraph applies to any humanitarian or fact-finding mission of the United Nations System.
- (b) Each High Contracting Party or party to a conflict, if so requested by the head of a mission to which this paragraph applies, shall:
- (i) Provide the personnel of the mission with the protections set out in sub-paragraph 2(b)(i) of this Article; and
- (ii) If access to or through any place under its control is necessary for the performance of the mission's functions and in order to provide the personnel of the mission with safe passage to or through that place:
- (aa) Unless on-going hostilities prevent, inform the head of the mission of a safe route to that place if such information is available; or
- (bb) If information identifying a safe route is not provided in accordance with sub-paragraph (aa), so far as is necessary and feasible, clear a lane through minefields.
4. Missions of the International Committee of the Red Cross
- (a) This paragraph applies to any mission of the International Committee of the Red Cross performing functions with the consent of the host State or States as provided for by

the Geneva Conventions of 12 August 1949 and, where applicable, their Additional Protocols.

- (b) Each High Contracting Party or party to a conflict, if so requested by the head of a mission to which this paragraph applies, shall:
- (i) Provide the personnel of the mission with the protections set out in sub-paragraph 2(b)(i) of this Article; and
- (ii) Take the measures set out in sub-paragraph 3(b)(ii) of this Article.
5. Other humanitarian missions and missions of enquiry
- (a) Insofar as paragraphs 2, 3 and 4 of this Article do not apply to them, this paragraph applies to the following missions when they are performing functions in the area of a conflict or to assist the victims of a conflict:
- (i) Any humanitarian mission of a national Red Cross or Red Crescent society or of their International Federation;
- (ii) Any mission of an impartial humanitarian organization, including any impartial humanitarian demining mission; and
- (iii) Any mission of enquiry established pursuant to the provisions of the Geneva Conventions of 12 August 1949 and, where applicable, their Additional Protocols.
- (b) Each High Contracting Party or party to a conflict, if so requested by the head of a mission to which this paragraph applies, shall, so far as is feasible:
- (i) Provide the personnel of the mission with the protections set out in sub-paragraph 2(b)(i) of this Article; and
- (ii) Take the measures set out in sub-paragraph 3(b)(ii) of this Article.

6. Confidentiality

All information provided in confidence pursuant to this Article shall be treated by the recipient in strict confidence and shall not be released outside the force or mission concerned without the express authorization of the provider of the information.

7. Respect for laws and regulations

Without prejudice to such privileges and immunities as they may enjoy or to the requirements of their duties, personnel participating in the forces and missions referred to in this Article shall:

- (a) Respect the laws and regulations of the host State; and
- (b) Refrain from any action or activity incompatible with the impartial and international nature of their duties.

Article 13. Consultations of High Contracting Parties

1. The High Contracting Parties undertake to consult and cooperate with each other on all issues related to the operation of this Protocol. For this purpose, a conference of High Contracting Parties shall be held annually.
2. Participation in the annual conferences shall be determined by their agreed Rules of Procedure.

3. The work of the conference shall include:
- (a) Review of the operation and status of this Protocol;
 - (b) Consideration of matters arising from reports by High Contracting Parties according to paragraph 4 of this Article;
 - (c) Preparation for review conferences; and
 - (d) Consideration of the development of technologies to protect civilians against indiscriminate effects of mines.
4. The High Contracting Parties shall provide annual reports to the Depositary, who shall circulate them to all High Contracting Parties in advance of the conference, on any of the following matters:
- (a) Dissemination of information on this Protocol to their armed forces and to the civilian population;
 - (b) Mine clearance and rehabilitation programmes;
 - (c) Steps taken to meet technical requirements of this Protocol and any other relevant information pertaining thereto;
 - (d) Legislation related to this Protocol;
 - (e) Measures taken on international technical information exchange, on international cooperation on mine clearance, and on technical cooperation and assistance; and
 - (f) Other relevant matters.
5. The cost of the Conference of High Contracting Parties shall be borne by the High Contracting Parties and States not parties participating in the work of the conference, in accordance with the United Nations scale of assessment adjusted appropriately.

Article 14. Compliance

1. Each High Contracting Party shall take all appropriate steps, including legislative and other measures, to prevent and suppress violations of this Protocol by persons or on territory under its jurisdiction or control.
2. The measures envisaged in paragraph 1 of this Article include appropriate measures to ensure the imposition of penal sanctions against persons who, in relation to an armed conflict and contrary to the provisions of this Protocol, wilfully kill or cause serious injury to civilians and to bring such persons to justice.
3. Each High Contracting Party shall also require that its armed forces issue relevant military instructions and operating procedures and that armed forces personnel receive training commensurate with their duties and responsibilities to comply with the provisions of this Protocol.
4. The High Contracting Parties undertake to consult each other and to cooperate with each other bilaterally, through the Secretary-General of the United Nations or through other appropriate international procedures, to resolve any problems that may arise with regard to the interpretation and application of the provisions of this Protocol.

TECHNICAL ANNEX

1. Recording

- (a) Recording of the location of mines other than remotely-delivered mines, mined areas, booby-traps and other devices shall be carried out in accordance with the following provisions:
 - (i) The location of the minefields, mined areas and areas of booby-traps and other devices shall be specified accurately by relation to the coordinates of at least two reference points and the estimated dimensions of the area containing these weapons in relation to those reference points;
 - (ii) Maps, diagrams or other records shall be made in such a way as to indicate the location of minefields, mined areas, booby-traps and other devices in relation to reference points, and these records shall also indicate their perimeters and extent; and
 - (iii) For purposes of detection and clearance of mines, booby-traps and other devices, maps, diagrams or other records shall contain complete information on the type, number, emplacement method, type of fuse and life time, date and time of laying, anti-handling devices (if any) and other relevant information on all these weapons laid. Whenever feasible the minefield record shall show the exact location of every mine, except in row minefields where the row location is sufficient. The precise location and operating mechanism of each booby-trap laid shall be individually recorded.
 - (b) The estimated location and area of remotely-delivered mines shall be specified by coordinates of reference points (normally corner points) and shall be ascertained and when feasible marked on the ground at the earliest opportunity. The total number and type of mines laid, the date and time of laying and the self-destruction time periods shall also be recorded.
 - (c) Copies of records shall be held at a level of command sufficient to guarantee their safety as far as possible.
 - (d) The use of mines produced after the entry into force of this Protocol is prohibited unless they are marked in English or in the respective national language or languages with the following information:
 - (i) Name of the country of origin;
 - (ii) Month and year of production; and
 - (iii) Serial number or lot number.
 The marking should be visible, legible, durable and resistant to environmental effects, as far as possible.
- ### 2. Specifications on detectability
- (a) With respect to anti-personnel mines produced after 1 January 1997, such mines shall incorporate in their construction a material or device that enables the mine to be detected by commonly-available technical mine detection equipment and provides a response signal equivalent to a signal from 8 grammes or more of iron in a single coherent mass.

(b) With respect to anti-personnel mines produced before 1 January 1997, such mines shall either incorporate in their construction, or have attached prior to their emplacement, in a manner not easily removable, a material or device that enables the mine to be detected by commonly-available technical mine detection equipment and provides a response signal equivalent to a signal from 8 grammes or more of iron in a single coherent mass.

(c) In the event that a High Contracting Party determines that it cannot immediately comply with sub-paragraph (b), it may declare at the time of its notification of consent to be bound by this Protocol that it will defer compliance with sub-paragraph (b) for a period not to exceed 9 years from the entry into force of this Protocol. In the meantime it shall, to the extent feasible, minimize the use of anti-personnel mines that do not so comply.

3. Specifications on self-destruction and self-deactivation

(a) All remotely-delivered anti-personnel mines shall be designed and constructed so that no more than 10% of activated mines will fail to self-destruct within 30 days after emplacement, and each mine shall have a back-up self-deactivation feature designed and constructed so that, in combination with the self-destruction mechanism, no more than one in one thousand activated mines will function as a mine 120 days after emplacement.

(b) All non-remotely delivered anti-personnel mines, used outside marked areas, as defined in Article 5 of this Protocol, shall comply with the requirements for self-destruction and self-deactivation stated in sub-paragraph (a).

(c) In the event that a High Contracting Party determines that it cannot immediately comply with sub-paragraphs (a) and/or (b), it may declare at the time of its notification of consent to be bound by this Protocol, that it will, with respect to mines produced prior to the entry into force of this Protocol, defer compliance with sub-paragraphs (a) and/or (b) for a period not to exceed 9 years from the entry into force of this Protocol.

During this period of deferral, the High Contracting Party shall:

(i) Undertake to minimize, to the extent feasible, the use of anti-personnel mines that do not so comply; and

(ii) With respect to remotely-delivered anti-personnel mines, comply with either the requirements for self-destruction or the requirements for self-deactivation and, with respect to other anti-personnel mines comply with at least the requirements for self-deactivation.

4. International signs for minefields and mined areas

Signs similar to the example attached and as specified below shall be utilized in the marking of minefields and mined areas to ensure their visibility and recognition by the civilian population:

(a) Size and shape: a triangle or square no smaller than 28 centimetres (11 inches) by 20 centimetres (7.9 inches) for a triangle, and 15 centimetres (6 inches) per side for a square;

(b) Colour: red or orange with a yellow reflecting border;

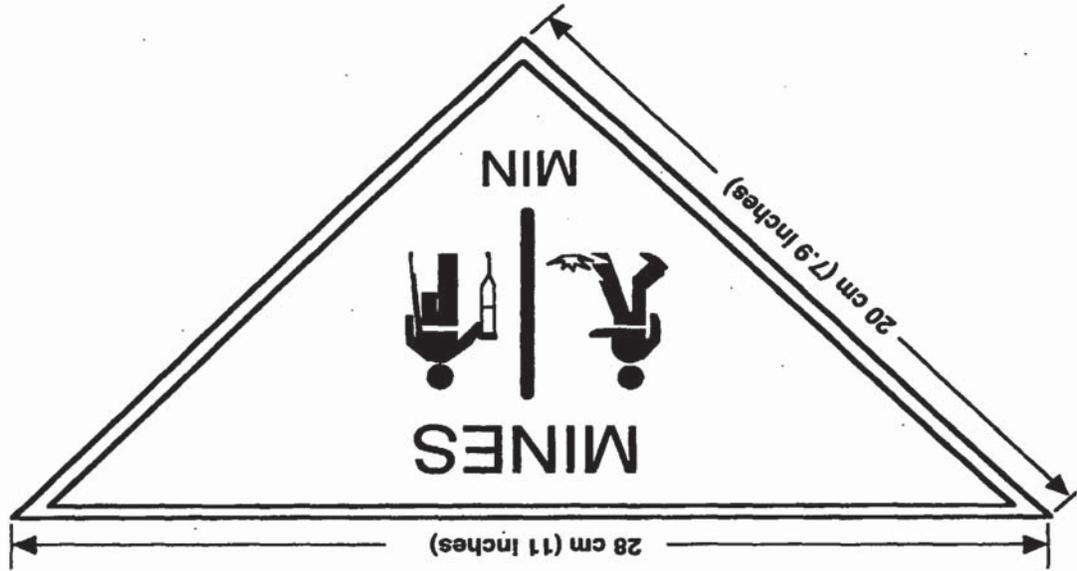
(c) Symbol: the symbol illustrated in the Attachment, or an alternative readily recognizable in the area in which the sign is to be displayed as identifying a dangerous area;

(d) Language: the sign should contain the word "mines" in one of the six official languages of the Convention (Arabic, Chinese, English, French, Russian and Spanish) and the language or languages prevalent in that area; and

(e) Spacing: signs should be placed around the minefield or mined area at a distance sufficient to ensure their visibility at any point by a civilian approaching the area."

Attachment

Warning Sign for Areas Containing Mines



ARTICLE 2. ENTRY INTO FORCE

This amended Protocol shall enter into force as provided for in paragraph 1 (b) of Article 8 of the Convention.

**Amendment to Article I of the Convention on Prohibitions or
Restrictions on the Use of Certain Conventional Weapons
which may be deemed to be Excessively Injurious or to have
Indiscriminate Effects, 2001**



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New York, 2005

No. 22495. Multilateral

CONVENTION ON PROHIBITIONS OR RESTRICTIONS ON THE USE OF CERTAIN CONVENTIONAL WEAPONS WHICH MAY BE DEEMED TO BE EXCESSIVELY INJURIOUS OR TO HAVE INDISCRIMINATE EFFECTS (WITH PROTOCOLS I, II AND III). GENEVA, 10 OCTOBER 1980¹

AMENDMENT TO THE CONVENTION ON PROHIBITIONS OR RESTRICTIONS ON THE USE OF CERTAIN CONVENTIONAL WEAPONS WHICH MAY BE DEEMED TO BE EXCESSIVELY INJURIOUS OR TO HAVE INDISCRIMINATE EFFECTS. GENEVA, 21 DECEMBER 2001

Entry into force : 18 May 2004, in accordance with article 8, paragraph 1 (b) of the Convention which reads, in part, as follows: "amendments ... shall enter into force in the same manner as the Convention and the annexed Protocols (i.e. ... six months after the date of deposit of the twentieth instrument of ratification, acceptance, approval or accession." (see following page)

Authentic texts : Arabic, Chinese, English, French, Russian and Spanish
Registration with the Secretariat of the United Nations : ex officio, 18 May 2004

No. 22495. Multilatéral

CONVENTION SUR L'INTERDICTION OU LA LIMITATION DE L'EMPLOI DE CERTAINES ARMES CLASSIQUES QUI PEUVENT ÊTRE CONSIDÉRÉES COMME PRODUISANT DES EFFETS TRAUMATIQUES EXCESSIFS OU COMME FRAPPANT SANS DISCRIMINATION (AVEC PROTOCOLES I, II ET III). GENÈVE, 10 OCTOBRE 1980¹

AMENDEMENT À LA CONVENTION SUR L'INTERDICTION OU LA LIMITATION DE L'EMPLOI DE CERTAINES ARMES CLASSIQUES QUI PEUVENT ÊTRE CONSIDÉRÉES COMME PRODUISANT DES EFFETS TRAUMATIQUES EXCESSIFS OU COMME FRAPPANT SANS DISCRIMINATION. GENÈVE, 21 DÉCEMBRE 2001

Entrée en vigueur : 18 mai 2004, conformément à l'alinéa b) du paragraphe 1 de l'article 8 de la Convention qui se lit, en partie, comme suit : "les amendements ... entreront en vigueur de la même manière que la présente Convention et les Protocoles y annexés (soit six mois après la date dépôt du vingtième instrument de ratification, d'acceptation, d'approbation ou d'adhésion.)" (voir la page suivante)

Textes authentiques : arabe, chinois, anglais, français, russe et espagnol
Enregistrement auprès du Secrétariat des Nations Unies : d'office, 18 mai 2004

¹ United Nations, *Treaty Series*, vol. 1342, No. I-22495 — Nations Unies, *Recueil des Traités*, vol. 1342, no I-22495.

AMENDMENT TO ARTICLE I OF THE CONVENTION ON PROHIBITIONS OR RESTRICTIONS ON THE USE OF CERTAIN CONVENTIONAL WEAPONS WHICH MAY BE DEEMED TO BE EXCESSIVELY INJURIOUS OR TO HAVE INDISCRIMINATE EFFECTS (CCW)

The following decision to amend Article I of the Convention in order to expand the scope of its application to non-international armed conflicts was made by the States Parties at the Second Review Conference held from 11 to 21 December 2001. This decision appears in the Final Declaration of the Second Review Conference, as contained in document CCW/CONF.II/2.

“DECIDE to amend Article I of the Convention to read as follows:

- “1. This Convention and its annexed Protocols shall apply in the situations referred to in Article 2 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, including any situation described in paragraph 4 of Article I of Additional Protocol I to these Conventions.
2. This Convention and its annexed Protocols shall also apply, in addition to situations referred to in paragraph 1 of this Article, to situations referred to in Article 3 common to the Geneva Conventions of 12 August 1949. This Convention and its annexed Protocols shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence, and other acts of a similar nature, as not being armed conflicts.
3. In case of armed conflicts not of an international character occurring in the territory of one of the High Contracting Parties, each party to the conflict shall be bound to apply the prohibitions and restrictions of this Convention and its annexed Protocols.
4. Nothing in this Convention or its annexed Protocols shall be invoked for the purpose of affecting the sovereignty of a State or the responsibility of the Government, by all legitimate means, to maintain or re-establish law and order in the State or to defend the national unity and territorial integrity of the State.
5. Nothing in this Convention or its annexed Protocols shall be invoked as a justification for intervening, directly or indirectly, for any reason whatever, in the armed conflict or in the internal or external affairs of the High Contracting Party in the territory of which that conflict occurs.
6. The application of the provisions of this Convention and its annexed Protocols to parties to a conflict which are not High Contracting Parties that have accepted this Convention or its annexed Protocols, shall not change their legal status or the legal status of a disputed territory, either explicitly or implicitly.
7. The provisions of Paragraphs 2-6 of this Article shall not prejudice additional Protocols adopted after 1 January 2002, which may apply, exclude or modify the scope of their application in relation to this Article.”

Protocol on Explosive Remnants of War (Protocol V), 2003



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New York, 2010

PROTOCOL ON EXPLOSIVE REMNANTS OF WAR TO THE CONVENTION ON PROHIBITIONS OR RESTRICTIONS ON THE USE OF CERTAIN CONVENTIONAL WEAPONS WHICH MAY BE DEEMED TO BE EXCESSIVELY INJURIOUS OR TO HAVE INDISCRIMINATE EFFECTS (PROTOCOL V). GENEVA, 28 NOVEMBER 2003

PROTOCOLE RELATIF AUX RESTES EXPLOSIFS DE GUERRE À LA CONVENTION SUR L'INTERDICTION OU LA LIMITATION DE L'EMPLOI DE CERTAINES ARMES CLASSIQUES QUI PEUVENT ÊTRE CONSIDÉRÉES COMME PRODUISANT DES EFFETS TRAUMATIQUES EXCESSIFS OU COMME FRAPANT SANS DISCRIMINATION (PROTOCOLE V). GENÈVE, 28 NOVEMBRE 2003

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PROTOCOL ON EXPLOSIVE REMNANTS OF WAR

The High Contracting Parties,

Recognising the serious post-conflict humanitarian problems caused by explosive remnants of war,

Conscious of the need to conclude a Protocol on post-conflict remedial measures of a generic nature in order to minimise the risks and effects of explosive remnants of war,

And willing to address generic preventive measures, through voluntary best practices specified in a Technical Annex for improving the reliability of munitions, and therefore minimising the occurrence of explosive remnants of war,

Have agreed as follows:

Article 1. General provision and scope of application

1. In conformity with the Charter of the United Nations and of the rules of the international law of armed conflict applicable to them, High Contracting Parties agree to comply with the obligations specified in this Protocol, both individually and in co-operation with other High Contracting Parties, to minimise the risks and effects of explosive remnants of war in post-conflict situations.

2. This Protocol shall apply to explosive remnants of war on the land territory including internal waters of High Contracting Parties.

3. This Protocol shall apply to situations resulting from conflicts referred to in Article 1, paragraphs 1 to 6, of the Convention, as amended on 21 December 2001.

4. Articles 3, 4, 5 and 8 of this Protocol apply to explosive remnants of war other than existing explosive remnants of war as defined in Article 2, paragraph 5 of this Protocol.

Article 2. Definitions

For the purpose of this Protocol,

1. Explosive ordnance means conventional munitions containing explosives, with the exception of mines, booby traps and other devices as defined in Protocol II of this Convention as amended on 3 May 1996.

2. Unexploded ordnance means explosive ordnance that has been primed, fused, armed, or otherwise prepared for use and used in an armed conflict. It may have been fired, dropped, launched or projected and should have exploded but failed to do so.

3. Abandoned explosive ordnance means explosive ordnance that has not been used during an armed conflict, that has been left behind or dumped by a party to an armed conflict, and which is no longer under control of the party that left it behind or dumped it. Abandoned explosive ordnance may or may not have been primed, fused, armed or otherwise prepared for use.

4. Explosive remnants of war means unexploded ordnance and abandoned explosive ordnance.

5. Existing explosive remnants of war means unexploded ordnance and abandoned explosive ordnance that existed prior to the entry into force of this Protocol for the High Contracting Party on whose territory it exists.

Article 3. Clearance, removal or destruction of explosive remnants of war

1. Each High Contracting Party and party to an armed conflict shall bear the responsibilities set out in this Article with respect to all explosive remnants of war in territory under its control. In cases where a user of explosive ordnance which has become explosive remnants of war, does not exercise control of the territory, the user shall, after the cessation of active hostilities, provide where feasible, inter alia technical, financial, material or human resources assistance, bilaterally or through a mutually agreed third party, including inter alia through the United Nations system or other relevant organisations, to facilitate the marking and clearance, removal or destruction of such explosive remnants of war.

2. After the cessation of active hostilities and as soon as feasible, each High Contracting Party and party to an armed conflict shall mark and clear, remove or destroy explosive remnants of war in affected territories under its control. Areas affected by explosive remnants of war which are assessed pursuant to paragraph 3 of this Article as posing a serious humanitarian risk shall be accorded priority status for clearance, removal or destruction.

3. After the cessation of active hostilities and as soon as feasible, each High Contracting Party and party to an armed conflict shall take the following measures in affected territories under its control, to reduce the risks posed by explosive remnants of war:

- (a) survey and assess the threat posed by explosive remnants of war;
- (b) assess and prioritise needs and practicability in terms of marking and clearance, removal or destruction;
- (c) mark and clear, remove or destroy explosive remnants of war;
- (d) take steps to mobilise resources to carry out these activities.

4. In conducting the above activities High Contracting Parties and parties to an armed conflict shall take into account international standards, including the International Mine Action Standards.

5. High Contracting Parties shall co-operate, where appropriate, both among themselves and with other states, relevant regional and international organisations and non-governmental organisations on the provision of inter alia technical, financial, material and human resources assistance including, in appropriate circumstances, the undertaking of joint operations necessary to fulfil the provisions of this Article.

Article 4. Recording, retaining and transmission of information

1. High Contracting Parties and parties to an armed conflict shall to the maximum extent possible and as far as practicable record and retain information on the use of explo-

sive ordnance or abandonment of explosive ordnance, to facilitate the rapid marking and clearance, removal or destruction of explosive remnants of war, risk education and the provision of relevant information to the party in control of the territory and to civilian populations in that territory.

2. High Contracting Parties and parties to an armed conflict which have used or abandoned explosive ordnance which may have become explosive remnants of war shall, without delay after the cessation of active hostilities and as far as practicable, subject to these parties' legitimate security interests, make available such information to the party or parties in control of the affected area, bilaterally or through a mutually agreed third party including *inter alia* the United Nations or, upon request, to other relevant organisations which the party providing the information is satisfied are or will be undertaking risk education and the marking and clearance, removal or destruction of explosive remnants of war in the affected area.

3. In recording, retaining and transmitting such information, the High Contracting Parties should have regard to Part 1 of the Technical Annex.

Article 5. Other precautions for the protection of the civilian population, individual civilians and civilian objects from the risks and effects of explosive remnants of war

1. High Contracting Parties and parties to an armed conflict shall take all feasible precautions in the territory under their control affected by explosive remnants of war to protect the civilian population, individual civilians and civilian objects from the risks and effects of explosive remnants of war. Feasible precautions are those precautions which are practicable or practicably possible, taking into account all circumstances ruling at the time, including humanitarian and military considerations. These precautions may include warnings, risk education to the civilian population, marking, fencing and monitoring of territory affected by explosive remnants of war, as set out in Part 2 of the Technical Annex.

Article 6. Provisions for the protection of humanitarian missions and organisations from the effects of explosive remnants of war

1. Each High Contracting Party and party to an armed conflict shall:

- (a) Protect, as far as feasible, from the effects of explosive remnants of war, humanitarian missions and organisations that are or will be operating in the area under the control of the High Contracting Party or party to an armed conflict and with that party's consent.
- (b) Upon request by such a humanitarian mission or organisation, provide, as far as feasible, information on the location of all explosive remnants of war that it is aware of in territory where the requesting humanitarian mission or organisation will operate or is operating.

2. The provisions of this Article are without prejudice to existing International Humanitarian Law or other international instruments as applicable or decisions by the Security Council of the United Nations which provide for a higher level of protection.

Article 7. Assistance with respect to existing explosive remnants of war

1. Each High Contracting Party has the right to seek and receive assistance, where appropriate, from other High Contracting Parties, from states non-party and relevant international organisations and institutions in dealing with the problems posed by existing explosive remnants of war.

2. Each High Contracting Party in a position to do so shall provide assistance in dealing with the problems posed by existing explosive remnants of war, as necessary and feasible. In so doing, High Contracting Parties shall also take into account the humanitarian objectives of this Protocol, as well as international standards including the International Mine Action Standards.

Article 8. Co-operation and assistance

1. Each High Contracting Party in a position to do so shall provide assistance for the marking and clearance, removal or destruction of explosive remnants of war, and for risk education to civilian populations and related activities *inter alia* through the United Nations system, other relevant international, regional or national organisations or institutions, the International Committee of the Red Cross, national Red Cross and Red Crescent societies and their International Federation, non-governmental organisations, or on a bilateral basis.

2. Each High Contracting Party in a position to do so shall provide assistance for the care and rehabilitation and social and economic reintegration of victims of explosive remnants of war. Such assistance may be provided *inter alia* through the United Nations system, relevant international, regional or national organisations or institutions, the International Committee of the Red Cross, national Red Cross and Red Crescent societies and their International Federation, non-governmental organisations, or on a bilateral basis.

3. Each High Contracting Party in a position to do so shall contribute to trust funds within the United Nations system, as well as other relevant trust funds, to facilitate the provision of assistance under this Protocol.

4. Each High Contracting Party shall have the right to participate in the fullest possible exchange of equipment, material and scientific and technological information other than weapons related technology, necessary for the implementation of this Protocol. High Contracting Parties undertake to facilitate such exchanges in accordance with national legislation and shall not impose undue restrictions on the provision of clearance equipment and related technological information for humanitarian purposes.

5. Each High Contracting Party undertakes to provide information to the relevant databases on mine action established within the United Nations system, especially information concerning various means and technologies of clearance of explosive remnants of war, lists of experts, expert agencies or national points of contact on clearance of explosive remnants of war and, on a voluntary basis, technical information on relevant types of explosive ordnance.

6. High Contracting Parties may submit requests for assistance substantiated by relevant information to the United Nations, to other appropriate bodies or to other states. These requests may be submitted to the Secretary-General of the United Nations, who shall

transmit them to all High Contracting Parties and to relevant international organisations and non-governmental organisations.

7. In the case of requests to the United Nations, the Secretary-General of the United Nations, within the resources available to the Secretary-General of the United Nations, may take appropriate steps to assess the situation and in co-operation with the requesting High Contracting Party and other High Contracting Parties with responsibility as set out in Article 3 above, recommend the appropriate provision of assistance. The Secretary-General may also report to High Contracting Parties on any such assessment as well as on the type and scope of assistance required, including possible contributions from the trust funds established within the United Nations system.

Article 9. Generic preventive measures

1. Bearing in mind the different situations and capacities, each High Contracting Party is encouraged to take generic preventive measures aimed at minimising the occurrence of explosive remnants of war, including, but not limited to, those referred to in part 3 of the Technical Annex.
2. Each High Contracting Party may, on a voluntary basis, exchange information related to efforts to promote and establish best practices in respect of paragraph 1 of this Article.

Article 10. Consultations of High Contracting Parties

1. The High Contracting Parties undertake to consult and co-operate with each other on all issues related to the operation of this Protocol. For this purpose, a Conference of High Contracting Parties shall be held as agreed to by a majority, but no less than eighteen High Contracting Parties.
2. The work of the conferences of High Contracting Parties shall include:
 - (a) review of the status and operation of this Protocol;
 - (b) consideration of matters pertaining to national implementation of this Protocol, including national reporting or updating on an annual basis.
 - (c) preparation for review conferences.
3. The costs of the Conference of High Contracting Parties shall be borne by the High Contracting Parties and States not parties participating in the Conference, in accordance with the United Nations scale of assessment adjusted appropriately.

Article 11. Compliance

1. Each High Contracting Party shall require that its armed forces and relevant agencies or departments issue appropriate instructions and operating procedures and that its personnel receive training consistent with the relevant provisions of this Protocol.
2. The High Contracting Parties undertake to consult each other and to co-operate with each other bilaterally, through the Secretary-General of the United Nations or through

other appropriate international procedures, to resolve any problems that may arise with regard to the interpretation and application of the provisions of this Protocol.

TECHNICAL ANNEX

This Technical Annex contains suggested best practice for achieving the objectives contained in Articles 4, 5 and 9 of this Protocol. This Technical Annex will be implemented by High Contracting Parties on a voluntary basis.

1. Recording, storage and release of information for Unexploded Ordnance (UXO) and Abandoned Explosive Ordnance (AXO)

(a) Recording of information: Regarding explosive ordnance which may have become UXO a State should endeavour to record the following information as accurately as possible:

- (i) the location of areas targeted using explosive ordnance;
- (ii) the approximate number of explosive ordnance used in the areas under (i);
- (iii) the type and nature of explosive ordnance used in areas under (i);
- (iv) the general location of known and probable UXO;

Where a State has been obliged to abandon explosive ordnance in the course of operations, it should endeavour to leave AXO in a safe and secure manner and record information on this ordnance as follows:

- (v) the location of AXO;
 - (vi) the approximate amount of AXO at each specific site;
 - (vii) the types of AXO at each specific site.
- (b) Storage of information: Where a State has recorded information in accordance with paragraph (a), it should be stored in such a manner as to allow for its retrieval and subsequent release in accordance with paragraph (c).

(c) Release of information: Information recorded and stored by a State in accordance with paragraphs (a) and (b) should, taking into account the security interests and other obligations of the State providing the information, be released in accordance with the following provisions:

- (i) Content:
On UXO the released information should contain details on:
 - (1) the general location of known and probable UXO;
 - (2) the types and approximate number of explosive ordnance used in the targeted areas;
 - (3) the method of identifying the explosive ordnance including colour, size and shape and other relevant markings;
 - (4) the method for safe disposal of the explosive ordnance.
- On AXO the released information should contain details on:
 - (5) the location of the AXO;
 - (6) the approximate number of AXO at each specific site;
 - (7) the types of AXO at each specific site;

shape;

(8) the method of identifying the AXO, including colour, size and

(9) information on type and methods of packing for AXO;

(10) state of readiness;

(11) the location and nature of any booby traps known to be present in the area of AXO.

(ii) Recipient: The information should be released to the party or parties in control of the affected territory and to those persons or institutions that the releasing State is satisfied are, or will be, involved in UXO or AXO clearance in the affected area, in the education of the civilian population on the risks of UXO or AXO.

(iii) Mechanism: A State should, where feasible, make use of those mechanisms established internationally or locally for the release of information, such as through UNMAS, IMSMA, and other expert agencies, as considered appropriate by the releasing State.

(iv) Timing: The information should be released as soon as possible, taking into account such matters as any ongoing military and humanitarian operations in the affected areas, the availability and reliability of information and relevant security issues.

2. Warnings, risk education, marking, fencing and monitoring

Key terms

(a) Warnings are the punctual provision of cautionary information to the civilian population, intended to minimise risks caused by explosive remnants of war in affected territories.

(b) Risk education to the civilian population should consist of risk education programmes to facilitate information exchange between affected communities, government authorities and humanitarian organisations so that affected communities are informed about the threat from explosive remnants of war. Risk education programmes are usually a long term activity.

Best practice elements of warnings and risk education

(c) All programmes of warnings and risk education should, where possible, take into account prevailing national and international standards, including the International Mine Action Standards.

(d) Warnings and risk education should be provided to the affected civilian population which comprises civilians living in or around areas containing explosive remnants of war and civilians who transit such areas.

(e) Warnings should be given, as soon as possible, depending on the context and the information available. A risk education programme should replace a warnings programme as soon as possible. Warnings and risk education always should be provided to the affected communities at the earliest possible time.

(f) Parties to a conflict should employ third parties such as international organisations and non-governmental organisations when they do not have the resources and skills to deliver efficient risk education.

(g) Parties to a conflict should, if possible, provide additional resources for warnings and risk education. Such items might include: provision of logistical support, production of risk education materials, financial support and general cartographic information.

Marking, fencing, and monitoring of an explosive remnants of war affected area

(h) When possible, at any time during the course of a conflict and thereafter, where explosive remnants of war exist the parties to a conflict should, at the earliest possible time and to the maximum extent possible, ensure that areas containing explosive remnants of war are marked, fenced and monitored so as to ensure the effective exclusion of civilians, in accordance with the following provisions.

(i) Warning signs based on methods of marking recognised by the affected community should be utilised in the marking of suspected hazardous areas. Signs and other hazardous area boundary markers should as far as possible be visible, legible, durable and resistant to environmental effects and should clearly identify which side of the marked boundary is considered to be within the explosive remnants of war affected area and which side is considered to be safe.

(j) An appropriate structure should be put in place with responsibility for the monitoring and maintenance of permanent and temporary marking systems, integrated with national and local risk education programmes.

3. Generic preventive measures

States producing or procuring explosive ordnance should to the extent possible and as appropriate endeavour to ensure that the following measures are implemented and respected during the life-cycle of explosive ordnance.

- (a) Munitions manufacturing management
 - (i) Production processes should be designed to achieve the greatest reliability of munitions.
 - (ii) Production processes should be subject to certified quality control measures.
 - (iii) During the production of explosive ordnance, certified quality assurance standards that are internationally recognised should be applied.
 - (iv) Acceptance testing should be conducted through live-fire testing over a range of conditions or through other validated procedures.
 - (v) High reliability standards should be required in the course of explosive ordnance transactions and transfers.
- (b) Munitions management

In order to ensure the best possible long-term reliability of explosive ordnance, States are encouraged to apply best practice norms and operating procedures with respect to its storage, transport, field storage, and handling in accordance with the following guidance.

(i) Explosive ordnance, where necessary, should be stored in secure facilities or appropriate containers that protect the explosive ordnance and its components in a controlled atmosphere, if necessary.

(ii) A State should transport explosive ordnance to and from production facilities, storage facilities and the field in a manner that minimises damage to the explosive ordnance.

(iii) Appropriate containers and controlled environments, where necessary, should be used by a State when stockpiling and transporting explosive ordnance.

(iv) The risk of explosions in stockpiles should be minimised by the use of appropriate stockpile arrangements.

(v) States should apply appropriate explosive ordnance logging, tracking and testing procedures, which should include information on the date of manufacture of each number, lot or batch of explosive ordnance, and information on where the explosive ordnance has been, under what conditions it has been stored, and to what environmental factors it has been exposed.

(vi) Periodically, stockpiled explosive ordnance should undergo, where appropriate, live-firing testing to ensure that munitions function as desired.

(vii) Sub-assemblies of stockpiled explosive ordnance should, where appropriate, undergo laboratory testing to ensure that munitions function as desired.

(viii) Where necessary, appropriate action, including adjustment to the expected shelf-life of ordnance, should be taken as a result of information acquired by logging, tracking and testing procedures, in order to maintain the reliability of stockpiled explosive ordnance.

(c) Training

The proper training of all personnel involved in the handling, transporting and use of explosive ordnance is an important factor in seeking to ensure its reliable operation as intended. States should therefore adopt and maintain suitable training programmes to ensure that personnel are properly trained with regard to the munitions with which they will be required to deal.

(d) Transfer

A State planning to transfer explosive ordnance to another State that did not previously possess that type of explosive ordnance should endeavour to ensure that the receiving State has the capability to store, maintain and use that explosive ordnance correctly.

(e) Future production

A State should examine ways and means of improving the reliability of explosive ordnance that it intends to produce or procure, with a view to achieving the highest possible reliability.

**Convention on the Safety of United Nations and Associated
Personnel, 1994**



No. 35457

Multilateral

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Treaty Series

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Multilatéral

Convention sur la sécurité du personnel des Nations Unies et du personnel associé.
New York, 9 décembre 1994
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au Secrétariat de l'Organisation des Nations Unies*

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New York, 2001

[ENGLISH TEXT — TEXTE ANGLAIS]

CONVENTION ON THE SAFETY OF UNITED NATIONS AND ASSOCIATED PERSONNEL

The States Parties to this Convention,

Deeply concerned over the growing number of deaths and injuries resulting from deliberate attacks against United Nations and associated personnel,

Bearing in mind that attacks against, or other mistreatment of, personnel who act on behalf of the United Nations are unjustifiable and unacceptable, by whomsoever committed,

Recognizing that United Nations operations are conducted in the common interest of the international community and in accordance with the principles and purposes of the Charter of the United Nations,

Acknowledging the important contribution that United Nations and associated personnel make in respect of United Nations efforts in the fields of preventive diplomacy, peace-making, peace-keeping, peace-building and humanitarian and other operations,

Conscious of the existing arrangements for ensuring the safety of United Nations and associated personnel, including the steps taken by the principal organs of the United Nations, in this regard,

Recognizing none the less that existing measures of protection for United Nations and associated personnel are inadequate,

Acknowledging that the effectiveness and safety of United Nations operations are enhanced where such operations are conducted with the consent and cooperation of the host State,

Appealing to all States in which United Nations and associated personnel are deployed and to all others on whom such personnel may rely, to provide comprehensive support aimed at facilitating the conduct and fulfilling the mandate of United Nations operations,

Convinced that there is an urgent need to adopt appropriate and effective measures for the prevention of attacks committed against United Nations and associated personnel and for the punishment of those who have committed such attacks,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Convention:

(a) "United Nations personnel" means:

(i) Persons engaged or deployed by the Secretary-General of the United Nations as members of the military, police or civilian components of a United Nations operation;

(ii) Other officials and experts on mission of the United Nations or its specialized agencies or the International Atomic Energy Agency who are present in an official capacity in the area where a United Nations operation is being conducted;

(b) "Associated personnel" means:

(i) Persons assigned by a Government or an intergovernmental organization with the agreement of the competent organ of the United Nations;

(ii) Persons engaged by the Secretary-General of the United Nations or by a specialized agency or by the International Atomic Energy Agency;

(iii) Persons deployed by a humanitarian non-governmental organization or agency under an agreement with the Secretary-General of the United Nations or with a specialized agency or with the International Atomic Energy Agency, to carry out activities in support of the fulfilment of the mandate of a United Nations operation;

(c) "United Nations operation" means an operation established by the competent organ of the United Nations in accordance with the Charter of the United Nations and conducted under United Nations authority and control:

(i) Where the operation is for the purpose of maintaining or restoring international peace and security; or

(ii) Where the Security Council or the General Assembly has declared, for the purposes of this Convention, that there exists an exceptional risk to the safety of the personnel participating in the operation;

(d) "Host State" means a State in whose territory a United Nations operation is conducted;

(e) "Transit State" means a State, other than the host State, in whose territory United Nations and associated personnel or their equipment are in transit or temporarily present in connection with a United Nations operation.

Article 2. Scope of Application

1. This Convention applies in respect of United Nations and associated personnel and United Nations operations, as defined in article 1.

2. This Convention shall not apply to a United Nations operation authorized by the Security Council as an enforcement action under Chapter VII of the Charter of the United Nations in which any of the personnel are engaged as combatants against organized armed forces and to which the law of international armed conflict applies.

Article 3. Identification

1. The military and police components of a United Nations operation and their vehicles, vessels and aircraft shall bear distinctive identification. Other personnel, vehicles, vessels and aircraft involved in the United Nations operation shall be appropriately identified unless otherwise decided by the Secretary-General of the United Nations.

2. All United Nations and associated personnel shall carry appropriate identification documents.

Article 4. Agreements on the Status of the Operation

The host State and the United Nations shall conclude as soon as possible an agreement on the status of the United Nations operation and all personnel engaged in the operation including, inter alia, provisions on privileges and immunities for military and police components of the operation.

Article 5. Transit

A transit State shall facilitate the unimpeded transit of United Nations and associated personnel and their equipment to and from the host State.

Article 6. Respect for Laws and Regulations

1. Without prejudice to such privileges and immunities as they may enjoy or to the requirements of their duties, United Nations and associated personnel shall:

- (a) Respect the laws and regulations of the host State and the transit State; and
- (b) Refrain from any action or activity incompatible with the impartial and international nature of their duties.

2. The Secretary-General of the United Nations shall take all appropriate measures to ensure the observance of these obligations.

Article 7. Duty to Ensure the Safety and Security of United Nations and Associated Personnel

1. United Nations and associated personnel, their equipment and premises shall not be made the object of attack or of any action that prevents them from discharging their mandate.

2. States Parties shall take all appropriate measures to ensure the safety and security of United Nations and associated personnel. In particular, States Parties shall take all appropriate steps to protect United Nations and associated personnel who are deployed in their territory from the crimes set out in article 9.

3. States Parties shall cooperate with the United Nations and other States Parties, as appropriate, in the implementation of this Convention, particularly in any case where the host State is unable itself to take the required measures.

Article 8. Duty to Release or Return United Nations and Associated Personnel Captured or Detained

Except as otherwise provided in an applicable status-of-forces agreement, if United Nations or associated personnel are captured or detained in the course of the performance

of their duties and their identification has been established, they shall not be subjected to interrogation and they shall be promptly released and returned to United Nations or other appropriate authorities. Pending their release such personnel shall be treated in accordance with universally recognized standards of human rights and the principles and spirit of the Geneva Conventions of 1949.

Article 9. Crimes against United Nations and Associated Personnel

1. The intentional commission of:
 - (a) A murder, kidnapping or other attack upon the person or liberty of any United Nations or associated personnel;
 - (b) A violent attack upon the official premises, the private accommodation or the means of transportation of any United Nations or associated personnel likely to endanger his or her person or liberty;
 - (c) A threat to commit any such attack with the objective of compelling a physical or juridical person to do or to refrain from doing any act;
 - (d) An attempt to commit any such attack; and
 - (e) An act constituting participation as an accomplice in any such attack, or in an attempt to commit such attack, or in organizing or ordering others to commit such attack, shall be made by each State Party a crime under its national law.
2. Each State Party shall make the crimes set out in paragraph 1 punishable by appropriate penalties which shall take into account their grave nature.

Article 10. Establishment of Jurisdiction

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the crimes set out in article 9 in the following cases:
 - (a) When the crime is committed in the territory of that State or on board a ship or aircraft registered in that State;
 - (b) When the alleged offender is a national of that State.
2. A State Party may also establish its jurisdiction over any such crime when it is committed:
 - (a) By a stateless person whose habitual residence is in that State; or
 - (b) With respect to a national of that State; or
 - (c) In an attempt to compel that State to do or to abstain from doing any act.
3. Any State Party which has established jurisdiction as mentioned in paragraph 2 shall notify the Secretary-General of the United Nations. If such State Party subsequently rescinds that jurisdiction, it shall notify the Secretary-General of the United Nations.
4. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the crimes set out in article 9 in cases where the alleged offender is present in its territory and it does not extradite such person pursuant to article 15 to any of the States Parties which have established their jurisdiction in accordance with paragraph 1 or 2.

5. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

Article 11. Prevention of Crimes against United Nations and Associated Personnel

States Parties shall cooperate in the prevention of the crimes set out in article 9, particularly by:

- (a) Taking all practicable measures to prevent preparations in their respective territories for the commission of those crimes within or outside their territories; and
- (b) Exchanging information in accordance with their national law and coordinating the taking of administrative and other measures as appropriate to prevent the commission of those crimes.

Article 12. Communication of Information

1. Under the conditions provided for in its national law, the State Party in whose territory a crime set out in article 9 has been committed shall, if it has reason to believe that an alleged offender has fled from its territory, communicate to the Secretary-General of the United Nations and, directly or through the Secretary-General, to the State or States concerned all the pertinent facts regarding the crime committed and all available information regarding the identity of the alleged offender.

2. Whenever a crime set out in article 9 has been committed, any State Party which has information concerning the victim and circumstances of the crime shall endeavour to transmit such information, under the conditions provided for in its national law, fully and promptly to the Secretary-General of the United Nations and the State or States concerned.

Article 13. Measures to Ensure Prosecution or Extradition

1. Where the circumstances so warrant, the State Party in whose territory the alleged offender is present shall take the appropriate measures under its national law to ensure that person's presence for the purpose of prosecution or extradition.

2. Measures taken in accordance with paragraph 1 shall be notified, in conformity with national law and without delay, to the Secretary-General of the United Nations and, either directly or through the Secretary-General, to:

- (a) The State where the crime was committed;
- (b) The State or States of which the alleged offender is a national or, if such person is a stateless person, in whose territory that person has his or her habitual residence;
- (c) The State or States of which the victim is a national; and
- (d) Other interested States.

Article 14. Prosecution of Alleged Offenders

The State Party in whose territory the alleged offender is present shall, if it does not extradite that person, submit, without exception whatsoever and without undue delay, the case to its competent authorities for the purpose of prosecution, through proceedings in accordance with the law of that State. Those authorities shall take their decision in the same manner as in the case of an ordinary offence of a grave nature under the law of that State.

Article 15. Extradition of Alleged Offenders

1. To the extent that the crimes set out in article 9 are not extraditable offences in any extradition treaty existing between States Parties, they shall be deemed to be included as such therein. States Parties undertake to include those crimes as extraditable offences in every extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may at its option consider this Convention as the legal basis for extradition in respect of those crimes. Extradition shall be subject to the conditions provided in the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize those crimes as extraditable offences between themselves subject to the conditions provided in the law of the requested State.

4. Each of those crimes shall be treated, for the purposes of extradition between States Parties, as if it had been committed not only in the place in which it occurred but also in the territories of the States Parties which have established their jurisdiction in accordance with paragraph 1 or 2 of article 10.

Article 16. Mutual Assistance in Criminal Matters

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the crimes set out in article 9, including assistance in obtaining evidence at their disposal necessary for the proceedings. The law of the requested State shall apply in all cases.

2. The provisions of paragraph 1 shall not affect obligations concerning mutual assistance embodied in any other treaty.

Article 17. Fair Treatment

1. Any person regarding whom investigations or proceedings are being carried out in connection with any of the crimes set out in article 9 shall be guaranteed fair treatment, a fair trial and full protection of his or her rights at all stages of the investigations or proceedings.

2. Any alleged offender shall be entitled:

- (a) To communicate without delay with the nearest appropriate representative of the State or States of which such person is a national or which is otherwise entitled to protect that person's rights or, if such person is a stateless person, of the State which, at that person's request, is willing to protect that person's rights; and
- (b) To be visited by a representative of that State or those States.

Article 18. Notification of Outcome of Proceedings

The State Party where an alleged offender is prosecuted shall communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the information to other States Parties.

Article 19. Dissemination

The States Parties undertake to disseminate this Convention as widely as possible and, in particular, to include the study thereof, as well as relevant provisions of international humanitarian law, in their programmes of military instruction.

Article 20. Savings Clauses

Nothing in this Convention shall affect:

- (a) The applicability of international humanitarian law and universally recognized standards of human rights as contained in international instruments in relation to the protection of United Nations operations and United Nations and associated personnel or the responsibility of such personnel to respect such law and standards;
- (b) The rights and obligations of States, consistent with the Charter of the United Nations, regarding the consent to entry of persons into their territories;
- (c) The obligation of United Nations and associated personnel to act in accordance with the terms of the mandate of a United Nations operation;
- (d) The right of States which voluntarily contribute personnel to a United Nations operation to withdraw their personnel from participation in such operation; or
- (e) The entitlement to appropriate compensation payable in the event of death, disability, injury or illness attributable to peace-keeping service by persons voluntarily contributed by States to United Nations operations.

Article 21. Right of Self-Defence

Nothing in this Convention shall be construed so as to derogate from the right to act in self-defence.

Article 22. Dispute Settlement

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which is not settled by negotiation shall, at the request of one

of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by application in conformity with the Statute of the Court.

2. Each State Party may at the time of signature, ratification, acceptance or approval of this Convention or accession thereto declare that it does not consider itself bound by all or part of paragraph 1. The other States Parties shall not be bound by paragraph 1 or the relevant part thereof with respect to any State Party which has made such a reservation.

3. Any State Party which has made a reservation in accordance with paragraph 2 may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 23. Review Meetings

At the request of one or more States Parties, and if approved by a majority of States Parties, the Secretary-General of the United Nations shall convene a meeting of the States Parties to review the implementation of the Convention, and any problems encountered with regard to its application.

Article 24. Signature

This Convention shall be open for signature by all States, until 31 December 1995, at United Nations Headquarters in New York.

Article 25. Ratification, Acceptance or Approval

This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.

Article 26. Accession

This Convention shall be open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 27. Entry into Force

1. This Convention shall enter into force thirty days after twenty-two instruments of ratification, acceptance, approval or accession have been deposited with the Secretary-General of the United Nations.

2. For each State ratifying, accepting, approving or acceding to the Convention after the deposit of the twenty-second instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification, acceptance, approval or accession.

Article 28. Denunciation

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations.
2. Denunciation shall take effect one year following the date on which notification is received by the Secretary-General of the United Nations.

Article 29. Authentic Texts

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States.

Done at New York this ninth day of December one thousand nine hundred and ninety-four.

**Convention on the Prohibition of the Use, Stockpiling,
Production and Transfer of Anti-Personnel Mines and on their
Destruction, 1997**



No. 35597

Multilateral

Treaty Series

***Treaties and international agreements
registered
or filed and recorded
with the Secretariat of the United Nations***

Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction. Oslo, 18 September 1997

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Recueil des Traités

***Traités et accords internationaux
enregistrés
ou classés et inscrits au répertoire
au Secrétariat de l'Organisation des Nations Unies***

United Nations • Nations Unies
New York, 2002

[ENGLISH TEXT — TEXTE ANGLAIS]

CONVENTION ON THE PROHIBITION OF THE USE, STOCKPILING, PRODUCTION AND TRANSFER OF ANTI-PERSONNEL MINES AND ON THEIR DESTRUCTION

Preamble

The States Parties,

Determined to put an end to the suffering and casualties caused by anti-personnel mines, that kill or maim hundreds of people every week, mostly innocent and defenceless civilians and especially children, obstruct economic development and reconstruction, inhibit the repatriation of refugees and internally displaced persons, and have other severe consequences for years after emplacement,

Believing it necessary to do their utmost to contribute in an efficient and coordinated manner to face the challenge of removing anti-personnel mines placed throughout the world, and to assure their destruction,

Wishing to do their utmost in providing assistance for the care and rehabilitation, including the social and economic reintegration of mine victims,

Recognizing that a total ban of anti-personnel mines would also be an important confidence-building measure,

Welcoming the adoption of the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices, as amended on 3 May 1996, annexed to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional

Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, and calling for the early ratification of this Protocol by all States which have not yet done so,

Welcoming also United Nations General Assembly Resolution 51/45 S of 10 December 1996 urging all States to pursue vigorously an effective, legally-binding international agreement to ban the use, stockpiling, production and transfer of anti-personnel landmines,

Welcoming furthermore the measures taken over the past years, both unilaterally and multilaterally, aiming at prohibiting, restricting or suspending the use, stockpiling, production and transfer of anti-personnel mines,

Stressing the role of public conscience in furthering the principles of humanity as evidenced by the call for a total ban of anti-personnel mines and recognizing the efforts to that end undertaken by the International Red Cross and Red Crescent Movement, the International Campaign to Ban Landmines and numerous other non-governmental organizations around the world,

Recalling the Ottawa Declaration of 5 October 1996 and the Brussels Declaration of 27 June 1997 urging the international community to negotiate an international and legally binding agreement prohibiting the use, stockpiling, production and transfer of anti-personnel mines,

Emphasizing the desirability of attracting the adherence of all States to this Convention, and determined to work strenuously towards the promotion of its universalization in all relevant fora including, *inter alia*, the United Nations, the Conference on Disarmament, regional organizations, and groupings, and review conferences of the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects,

Basing themselves on the principle of international humanitarian law that the right of the parties to an armed conflict to choose methods or means of warfare is not unlimited, on the principle that prohibits the employment in armed conflicts of weapons, projectiles and materials and methods of warfare of a nature to cause superfluous injury or unnecessary suffering and on the principle that a distinction must be made between civilians and combatants,

Have agreed as follows:

Article 1. General Obligations

1. Each State Party undertakes never under any circumstances:

- (a) To use anti-personnel mines;
 - (b) To develop, produce, otherwise acquire, stockpile, retain or transfer to anyone, directly or indirectly, anti-personnel mines;
 - (c) To assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Convention.
2. Each State Party undertakes to destroy or ensure the destruction of all anti-personnel mines in accordance with the provisions of this Convention.

Article 2. Definitions

1. "Anti-personnel mine" means a mine designed to be exploded by the presence, proximity or contact of a person and that will incapacitate, injure or kill one or more persons. Mines designed to be detonated by the presence, proximity or contact of a vehicle as opposed to a person, that are equipped with anti-handling devices, are not considered anti-personnel mines as a result of being so equipped.
2. "Mine" means a munition designed to be placed under, on or near the ground or other surface area and to be exploded by the presence, proximity or contact of a person or a vehicle.
3. "Anti-handling device" means a device intended to protect a mine and which is part of, linked to, attached to or placed under the mine and which activates when an attempt is made to tamper with or otherwise intentionally disturb the mine.
4. "Transfer" involves, in addition to the physical movement of anti-personnel mines into or from national territory, the transfer of title to and control over the mines, but does not involve the transfer of territory containing emplaced anti-personnel mines.
5. "Mined area" means an area which is dangerous due to the presence or suspected presence of mines.

Article 3. Exceptions

1. Notwithstanding the general obligations under Article 1, the retention or transfer of a number of anti-personnel mines for the development of and training in mine detection, mine clearance, or mine destruction techniques is permitted. The amount of such mines shall not exceed the minimum number absolutely necessary for the above-mentioned purposes.
2. The transfer of anti-personnel mines for the purpose of destruction is permitted.

Article 4. Destruction of Stockpiled Anti-Personnel Mines

Except as provided for in Article 3, each State Party undertakes to destroy or ensure the destruction of all stockpiled anti-personnel mines it owns or possesses, or that are under its jurisdiction or control, as soon as possible but not later than four years after the entry into force of this Convention for that State Party.

Article 5. Destruction of Anti-Personnel Mines in Mined Areas

1. Each State Party undertakes to destroy or ensure the destruction of all anti-personnel mines in mined areas under its jurisdiction or control, as soon as possible but not later than ten years after the entry into force of this Convention for that State Party.
2. Each State Party shall make every effort to identify all areas under its jurisdiction or control in which anti-personnel mines are known or suspected to be emplaced and shall ensure as soon as possible that all anti-personnel mines in mined areas under its jurisdiction or control are perimeter-marked, monitored and protected by fencing or other means, to ensure the effective exclusion of civilians, until all anti-personnel mines contained therein have been destroyed. The marking shall at least be to the standards set out in the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices, as amended on 3 May 1996, annexed to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects.
3. If a State Party believes that it will be unable to destroy or ensure the destruction of all anti-personnel mines referred to in paragraph 1 within that time period, it may submit a request to a Meeting of the States Parties or a Review Conference for an extension of the deadline for completing the destruction of such anti-personnel mines, for a period of up to ten years.
4. Each request shall contain:
 - (a) The duration of the proposed extension;
 - (b) A detailed explanation of the reasons for the proposed extension, including:
 - (i) The preparation and status of work conducted under national demining programs;
 - (ii) The financial and technical means available to the State Party for the destruction of all the anti-personnel mines; and

- (iii) Circumstances which impede the ability of the State Party to destroy all the anti-personnel mines in mined areas;
- (c) The humanitarian, social, economic, and environmental implications of the extension; and
- (d) Any other information relevant to the request for the proposed extension.

5. The Meeting of the States Parties or the Review Conference shall, taking into consideration the factors contained in paragraph 4, assess the request and decide by a majority of votes of States Parties present and voting whether to grant the request for an extension period.

6. Such an extension may be renewed upon the submission of a new request in accordance with paragraphs 3, 4 and 5 of this Article. In requesting a further extension period a State Party shall submit relevant additional information on what has been undertaken in the previous extension period pursuant to this Article.

Article 6. International Cooperation and Assistance

1. In fulfilling its obligations under this Convention each State Party has the right to seek and receive assistance, where feasible, from other States Parties to the extent possible.
2. Each State Party undertakes to facilitate and shall have the right to participate in the fullest possible exchange of equipment, material and scientific and technological information concerning the implementation of this Convention. The States Parties shall not impose undue restrictions on the provision of mine clearance equipment and related technological information for humanitarian purposes.
3. Each State Party in a position to do so shall provide assistance for the care and rehabilitation, and social and economic reintegration, of mine victims and for mine awareness programmes. Such assistance may be provided, *inter alia*, through the United Nations system, international, regional or national organizations or institutions, the International Committee of the Red Cross, national Red Cross and Red Crescent societies and their International Federation, non-governmental organizations, or on a bilateral basis.
4. Each State Party in a position to do so shall provide assistance for mine clearance and related activities. Such assistance may be provided, *inter alia*, through the United Nations system, international or regional organizations or institutions, non-governmental organizations or institutions, or on a bilateral basis, or by contributing to the United Nations Voluntary Trust Fund for Assistance in Mine Clearance, or other regional funds that deal with demining.
5. Each State Party in a position to do so shall provide assistance for the destruction of stockpiled anti-personnel mines.
6. Each State Party undertakes to provide information to the database on mine clearance established within the United Nations system, especially information concerning various means and technologies of mine clearance, and lists of experts, expert agencies or national points of contact on mine clearance.

7. States Parties may request the United Nations, regional organizations, other States Parties or other competent intergovernmental or non-governmental fora to assist its authorities in the elaboration of a national demining program to determine, inter alia:

- (a) The extent and scope of the anti-personnel mine problem;
 - (b) The financial, technological and human resources that are required for the implementation of the programme;
 - (c) The estimated number of years necessary to destroy all anti-personnel mines in mined areas under the jurisdiction or control of the concerned State Party;
 - (d) Mine awareness activities to reduce the incidence of mine-related injuries or deaths;
 - (e) Assistance to mine victims;
 - (f) The relationship between the Government of the concerned State Party and the relevant governmental, intergovernmental or non-governmental entities that will work in the implementation of the program.
8. Each State Party giving and receiving assistance under the provisions of this Article shall cooperate with a view to ensuring the full and prompt implementation of agreed assistance programs.

Article 7. Transparency Measures

1. Each State Party shall report to the Secretary-General of the United Nations as soon as practicable, and in any event not later than 180 days after the entry into force of this Convention for that State Party on:

- (a) The national implementation measures referred to in Article 9;
- (b) The total of all stockpiled anti-personnel mines owned or possessed by it, or under its jurisdiction or control, to include a breakdown of the type, quantity and, if possible, lot numbers of each type of anti-personnel mine stockpiled;
- (c) To the extent possible, the location of all mined areas that contain, or are suspected to contain, anti-personnel mines under its jurisdiction or control, to include as much detail as possible regarding the type and quantity of each type of anti-personnel mine in each mined area and when they were replaced;
- (d) The types, quantities and, if possible, lot numbers of all anti-personnel mines retained or transferred for the development of and training in mine detection, mine clearance or mine destruction techniques, or transferred for the purpose of destruction, as well as the institutions authorized by a State Party to retain or transfer anti-personnel mines, in accordance with Article 3;
- (e) The status of programmes for the conversion or de-commissioning of anti-personnel mine production facilities;
- (f) The status of programmes for the destruction of anti-personnel mines in accordance with Articles 4 and 5, including details of the methods which will be used in destruction, the location of all destruction sites and the applicable safety and environmental standards to be observed;

(g) The types and quantities of all anti-personnel mines destroyed after the entry into force of this Convention for that State Party, to include a breakdown of the quantity of each type of anti-personnel mine destroyed, in accordance with Articles 4 and 5, respectively, along with, if possible, the lot numbers of each type of anti-personnel mine in the case of destruction in accordance with Article 4;

(h) The technical characteristics of each type of anti-personnel mine produced, to the extent known, and those currently owned or possessed by a State Party, giving, where reasonably possible, such categories of information as may facilitate identification and clearance of anti-personnel mines; at a minimum, this information shall include the dimensions, fusing, explosive content, metallic content, colour photographs and other information which may facilitate mine clearance; and

(i) The measures taken to provide an immediate and effective warning to the population in relation to all areas identified under paragraph 2 of Article 5.

2. The information provided in accordance with this Article shall be updated by the States Parties annually, covering the last calendar year, and reported to the Secretary-General of the United Nations not later than 30 April of each year.

3. The Secretary-General of the United Nations shall transmit all such reports received to the States Parties.

Article 8. Facilitation and Clarification of Compliance

1. The States Parties agree to consult and cooperate with each other regarding the implementation of the provisions of this Convention, and to work together in a spirit of cooperation to facilitate compliance by States Parties with their obligations under this Convention.

2. If one or more States Parties wish to clarify and seek to resolve questions relating to compliance with the provisions of this Convention by another State Party, it may submit, through the Secretary-General of the United Nations, a Request for Clarification of that matter to that State Party. Such a request shall be accompanied by all appropriate information. Each State Party shall refrain from unfounded Requests for Clarification, care being taken to avoid abuse. A State Party that receives a Request for Clarification shall provide, through the Secretary-General of the United Nations, within 28 days to the requesting State Party all information which would assist in clarifying this matter.

3. If the requesting State Party does not receive a response through the Secretary-General of the United Nations within that time period, or deems the response to the Request for Clarification to be unsatisfactory, it may submit the matter through the Secretary-General of the United Nations to the next Meeting of the States Parties. The Secretary-General of the United Nations shall transmit the submission, accompanied by all appropriate information pertaining to the Request for Clarification, to all States Parties. All such information shall be presented to the requested State Party which shall have the right to respond.

4. Pending the convening of any meeting of the States Parties, any of the States Parties concerned may request the Secretary-General of the United Nations to exercise his or her good offices to facilitate the clarification requested.

5. The requesting State Party may propose through the Secretary-General of the United Nations the convening of a Special Meeting of the States Parties to consider the matter. The Secretary-General of the United Nations shall thereupon communicate this proposal and all information submitted by the States Parties concerned, to all States Parties with a request that they indicate whether they favour a Special Meeting of the States Parties, for the purpose of considering the matter. In the event that within 14 days from the date of such communication, at least one-third of the States Parties favours such a Special Meeting, the Secretary-General of the United Nations shall convene this Special Meeting of the States Parties within a further 14 days. A quorum for this Meeting shall consist of a majority of States Parties.

6. The Meeting of the States Parties or the Special Meeting of the States Parties, as the case may be, shall first determine whether to consider the matter further, taking into account all information submitted by the States Parties concerned. The Meeting of the States Parties or the Special Meeting of the States Parties shall make every effort to reach a decision by consensus. If despite all efforts to that end no agreement has been reached, it shall take this decision by a majority of States Parties present and voting.

7. All States Parties shall cooperate fully with the Meeting of the States Parties or the Special Meeting of the States Parties in the fulfilment of its review of the matter, including any fact-finding missions that are authorized in accordance with paragraph 8.

8. If further clarification is required, the Meeting of the States Parties or the Special Meeting of the States Parties shall authorize a fact-finding mission and decide on its mandate by a majority of States Parties present and voting. At any time the requested State Party may invite a fact-finding mission to its territory. Such a mission shall take place without a decision by a Meeting of the States Parties or a Special Meeting of the States Parties to authorize such a mission. The mission, consisting of up to 9 experts, designated and approved in accordance with paragraphs 9 and 10, may collect additional information on the spot or in other places directly related to the alleged compliance issue under the jurisdiction or control of the requested State Party.

9. The Secretary-General of the United Nations shall prepare and update a list of the names, nationalities and other relevant data of qualified experts provided by States Parties and communicate it to all States Parties. Any expert included on this list shall be regarded as designated for all fact-finding missions unless a State Party declares its non-acceptance in writing. In the event of non-acceptance, the expert shall not participate in fact-finding missions on the territory or any other place under the jurisdiction or control of the objecting State Party, if the non-acceptance was declared prior to the appointment of the expert to such missions.

10. Upon receiving a request from the Meeting of the States Parties or a Special Meeting of the States Parties, the Secretary-General of the United Nations shall, after consultations with the requested State Party, appoint the members of the mission, including its leader. Nationals of States Parties requesting the fact-finding mission or directly affected by it shall not be appointed to the mission. The members of the fact-finding mission shall enjoy privileges and immunities under Article VI of the Convention on the Privileges and Immunities of the United Nations, adopted on 13 February 1946.

11. Upon at least 72 hours notice, the members of the fact-finding mission shall arrive in the territory of the requested State Party at the earliest opportunity. The requested State Party shall take the necessary administrative measures to receive, transport and accommodate the mission, and shall be responsible for ensuring the security of the mission to the maximum extent possible while they are on territory under its control.

12. Without prejudice to the sovereignty of the requested State Party, the fact-finding mission may bring into the territory of the requested State Party the necessary equipment which shall be used exclusively for gathering information on the alleged compliance issue. Prior to its arrival, the mission will advise the requested State Party of the equipment that it intends to utilize in the course of its fact-finding mission.

13. The requested State Party shall make all efforts to ensure that the fact-finding mission is given the opportunity to speak with all relevant persons who may be able to provide information related to the alleged compliance issue.

14. The requested State Party shall grant access for the fact-finding mission to all areas and installations under its control where facts relevant to the compliance issue could be expected to be collected. This shall be subject to any arrangements that the requested State Party considers necessary for:

- (a) The protection of sensitive equipment, information and areas;
- (b) The protection of any constitutional obligations the requested State Party may have with regard to proprietary rights, searches and seizures, or other constitutional rights; or
- (c) The physical protection and safety of the members of the fact-finding mission.

In the event that the requested State Party makes such arrangements, it shall make every reasonable effort to demonstrate through alternative means its compliance with this Convention.

15. The fact-finding mission may remain in the territory of the State Party concerned for no more than 14 days, and at any particular site no more than 7 days, unless otherwise agreed.

16. All information provided in confidence and not related to the subject matter of the fact-finding mission shall be treated on a confidential basis.

17. The fact-finding mission shall report, through the Secretary-General of the United Nations, to the Meeting of the States Parties or the Special Meeting of the States Parties the results of its findings.

18. The Meeting of the States Parties or the Special Meeting of the States Parties shall consider all relevant information, including the report submitted by the fact-finding mission, and may request the requested State Party to take measures to address the compliance issue within a specified period of time. The requested State Party shall report on all measures taken in response to this request.

19. The Meeting of the States Parties or the Special Meeting of the States Parties may suggest to the States Parties concerned ways and means to further clarify or resolve the matter under consideration, including the initiation of appropriate procedures in conformity with international law. In circumstances where the issue at hand is determined to be due to circumstances beyond the control of the requested State Party, the Meeting of the States

Parties or the Special Meeting of the States Parties may recommend appropriate measures, including the use of cooperative measures referred to in Article 6.

20. The Meeting of the States Parties or the Special Meeting of the States Parties shall make every effort to reach its decisions referred to in paragraphs 18 and 19 by consensus, otherwise by a two-thirds majority of States Parties present and voting.

Article 9. National Implementation Measures

Each State Party shall take all appropriate legal, administrative and other measures, including the imposition of penal sanctions, to prevent and suppress any activity prohibited to a State Party under this Convention undertaken by persons or on territory under its jurisdiction or control.

Article 10. Settlement of Disputes

1. The States Parties shall consult and cooperate with each other to settle any dispute that may arise with regard to the application or the interpretation of this Convention. Each State Party may bring any such dispute before the Meeting of the States Parties.

2. The Meeting of the States Parties may contribute to the settlement of the dispute by whatever means it deems appropriate, including offering its good offices, calling upon the States Parties to a dispute to start the settlement procedure of their choice and recommending a time-limit for any agreed procedure.

3. This Article is without prejudice to the provisions of this Convention on facilitation and clarification of compliance.

Article 11. Meetings of the States Parties

1. The States Parties shall meet regularly in order to consider any matter with regard to the application or implementation of this Convention, including:

- (a) The operation and status of this Convention;
- (b) Matters arising from the reports submitted under the provisions of this Convention;
- (c) International cooperation and assistance in accordance with Article 6;
- (d) The development of technologies to clear anti-personnel mines;
- (e) Submissions of States Parties under Article 8; and
- (f) Decisions relating to submissions of States Parties as provided for in Article 5.

2. The First Meeting of the States Parties shall be convened by the Secretary-General of the United Nations within one year after the entry into force of this Convention. The subsequent meetings shall be convened by the Secretary-General of the United Nations annually until the first Review Conference.

3. Under the conditions set out in Article 8, the Secretary-General of the United Nations shall convene a Special Meeting of the States Parties.

4. States not parties to this Convention, as well as the United Nations, other relevant international organizations or institutions, regional organizations, the International Committee of the Red Cross and relevant non-governmental organizations may be invited to attend these meetings as observers in accordance with the agreed Rules of Procedure.

Article 12. Review Conferences

1. A Review Conference shall be convened by the Secretary-General of the United Nations five years after the entry into force of this Convention. Further Review Conferences shall be convened by the Secretary-General of the United Nations if so requested by one or more States Parties, provided that the interval between Review Conferences shall in no case be less than five years. All States Parties to this Convention shall be invited to each Review Conference.

2. The purpose of the Review Conference shall be:

- (a) To review the operation and status of this Convention;
- (b) To consider the need for and the interval between further Meetings of the States Parties referred to in paragraph 2 of Article 11;
- (c) To take decisions on submissions of States Parties as provided for in Article 5; and
- (d) To adopt, if necessary, in its final report conclusions related to the implementation of this Convention.

3. States not parties to this Convention, as well as the United Nations, other relevant international organizations or institutions, regional organizations, the International Committee of the Red Cross and relevant non-governmental organizations may be invited to attend each Review Conference as observers in accordance with the agreed Rules of Procedure.

Article 13. Amendments

1. At any time after the entry into force of this Convention any State Party may propose amendments to this Convention. Any proposal for an amendment shall be communicated to the Depositary, who shall circulate it to all States Parties and shall seek their views on whether an Amendment Conference should be convened to consider the proposal. If a majority of the States Parties notify the Depositary no later than 30 days after its circulation that they support further consideration of the proposal, the Depositary shall convene an Amendment Conference to which all States Parties shall be invited.

2. States not parties to this Convention, as well as the United Nations, other relevant international

organizations or institutions, regional organizations, the International Committee of the Red Cross and relevant non-governmental organizations may be invited to attend each Amendment Conference as observers in accordance with the agreed Rules of Procedure.

3. The Amendment Conference shall be held immediately following a Meeting of the States Parties or a Review Conference unless a majority of the States Parties request that it be held earlier.

4. Any amendment to this Convention shall be adopted by a majority of two-thirds of the States Parties present and voting at the Amendment Conference. The Depositary shall communicate any amendment so adopted to the States Parties.

5. An amendment to this Convention shall enter into force for all States Parties to this Convention which have accepted it, upon the deposit with the Depositary of instruments of acceptance by a majority of States Parties. Thereafter it shall enter into force for any remaining State Party on the date of deposit of its instrument of acceptance.

Article 14. Costs

1. The costs of the Meetings of the States Parties, the Special Meetings of the States Parties, the Review Conferences and the Amendment Conferences shall be borne by the States Parties and States not parties to this Convention participating therein, in accordance with the United Nations scale of assessment adjusted appropriately.

2. The costs incurred by the Secretary-General of the United Nations under Articles 7 and 8 and the costs of any fact-finding mission shall be borne by the States Parties in accordance with the United Nations scale of assessment adjusted appropriately.

Article 15. Signature

This Convention, done at Oslo, Norway, on 18 September 1997, shall be open for signature at Ottawa, Canada, by all States from 3 December 1997 until 4 December 1997, and at the United Nations Headquarters in New York from 5 December 1997 until its entry into force.

Article 16. Ratification, Acceptance, Approval or Accession

1. This Convention is subject to ratification, acceptance or approval of the Signatories.
2. It shall be open for accession by any State which has not signed the Convention.
3. The instruments of ratification, acceptance, approval or accession shall be deposited with the Depositary.

Article 17. Entry into Force

1. This Convention shall enter into force on the first day of the sixth month after the month in which the 40th instrument of ratification, acceptance, approval or accession has been deposited.
2. For any State which deposits its instrument of ratification, acceptance, approval or accession after the date of the deposit of the 40th instrument of ratification, acceptance, approval or accession, this Convention shall enter into force on the first day of the sixth month after the date on which that State has deposited its instrument of ratification, acceptance, approval or accession.

Article 18. Provisional Application

Any State may at the time of its ratification, acceptance, approval or accession, declare that it will apply provisionally paragraph 1 of Article 1 of this Convention pending its entry into force.

Article 19. Reservations

The Articles of this Convention shall not be subject to reservations.

Article 20. Duration and Withdrawal

1. This Convention shall be of unlimited duration.
2. Each State Party shall, in exercising its national sovereignty, have the right to withdraw from this Convention. It shall give notice of such withdrawal to all other States Parties, to the Depositary and to the United Nations Security Council. Such instrument of withdrawal shall include a full explanation of the reasons motivating this withdrawal.
3. Such withdrawal shall only take effect six months after the receipt of the instrument of withdrawal by the Depositary. If, however, on the expiry of that six-month period, the withdrawing State Party is engaged in an armed conflict, the withdrawal shall not take effect before the end of the armed conflict.
4. The withdrawal of a State Party from this Convention shall not in any way affect the duty of States to continue fulfilling the obligations assumed under any relevant rules of international law.

Article 21. Depositary

The Secretary-General of the United Nations is hereby designated as the Depositary of this Convention.

Article 22. Authentic Texts

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

**Report of the Secretary-General to the Security Council on the
protection of civilians in armed conflict, S/1999/957,
8 September 1999**



Security Council

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REPORT OF THE SECRETARY-GENERAL TO THE SECURITY COUNCIL ON THE PROTECTION OF CIVILIANS IN ARMED CONFLICT

I. INTRODUCTION

1. On 12 February 1999 the Security Council held an open meeting on the matter of the protection of civilians in armed conflict. The Council noted with concern that civilians continued to be targeted in instances of armed conflict, in flagrant violation of international humanitarian and human rights law (S/PRST/1999/6). The Council requested that I submit a report with recommendations on how it could act to improve both the physical and legal protection of civilians in situations of armed conflict. I hereby submit the present report to the Security Council in response to that request.

2. Despite the adoption of the various conventions on international humanitarian and human rights law over the past 50 years, hardly a day goes by where we are not presented with evidence of the intimidation, brutalization, torture and killing of helpless civilians in situations of armed conflict. Whether it is mutilations in Sierra Leone, genocide in Rwanda, ethnic cleansing in the Balkans or disappearances in Latin America, the parties to conflicts have acted with deliberate indifference to those conventions. Rebel factions, opposition fighters and Government forces continue to target innocent civilians with alarming frequency.

3. International humanitarian and human rights law set out the rights of civilians and the obligations of combatants during time of conflict. Yet, belligerents throughout the world refuse to respect these statutes, relying instead on terror as a means of control over populations. Terrible hardships are borne by those who are targeted and tremendous stresses are placed on those who attempt to cope with each crisis.

4. On 12 August 1999, on the fiftieth anniversary of the signature of the Geneva Conventions, I signed, with others, a solemn appeal to all peoples, nations and Governments to reject the idea that war is inevitable and to work tirelessly to eradicate its underlying causes; to demand of all those involved in armed conflicts that they respect the essential humanitarian principles and the rules of international law; to spare civilians the agony of war; and to foster relations between individuals, peoples and nations on the basis of respect for human dignity, compassion and solidarity.

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5. This report offers clear recommendations on what must be done to protect civilians, including measures that the Security Council can adopt within its sphere of responsibility. The report seeks to encourage decisive Council action to address this critical issue and to promote a "climate of compliance". How the Council responds to this challenge will be of crucial importance.

II. THREATS AND VIOLENCE AGAINST CIVILIANS IN ARMED CONFLICT

6. International humanitarian law sets standards for parties to an armed conflict on the treatment of civilians and other protected persons. Virtually all Member States have ratified the Geneva Conventions of 1949,¹ with a majority having signed or ratified the 1977 Protocols.² There are also legal norms in international human rights law from which there can be no derogation or suspension in time of public emergency.

7. However, the failure of parties to armed conflict to comply with the law on the one hand, and the lack of effective enforcement mechanisms on the other, have led to a situation in which civilians suffer disproportionately, and which the international community appears powerless to prevent.

A. Attacks against civilians

8. In many of today's armed conflicts, civilian casualties and the destruction of civilian infrastructure are not simply byproducts of war, but the consequence of the deliberate targeting of non-combatants. The violence is frequently perpetrated by non-state actors, including irregular forces and privately financed militias. In many conflicts, belligerents target civilians in order to expel or eradicate segments of the population, or for the purpose of hastening military surrender.

9. One feature of internal conflicts today is that the dividing line between civilians and combatants is frequently blurred. Combatants often live or seek shelter in villages, and sometimes use innocent civilians, even children, as human shields. In some cases, communities provide logistic support to armed groups, either voluntarily or under compulsion, and become targeted as a consequence.

10. In some cases, civilians have been systematically tortured and killed. During the 1994 genocide in Rwanda, entire families were executed in their homes

¹ To date, 188 countries have ratified the Geneva Conventions.

² Protocol I additional to the four Geneva Conventions of 1949 extends the definition of "international armed conflicts" to armed conflicts in which people are fighting against colonial domination, alien occupation and against racist regimes in the exercise of their right to self-determination. Protocol II additional to the Geneva Conventions develops and supplements article 3 common to the four Geneva Conventions concerning armed conflicts "not of an international character" occurring in the territory of one of the "High Contracting Parties".

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and entire villages brutalized in an orchestrated campaign of mass extermination that claimed more than 500,000 lives. In Sierra Leone, since 1997, more than 5,000 civilians have suffered mutilations. In Burundi, over a quarter of a million people have been killed and hundreds of thousands repeatedly displaced.

B. Forced displacement

11. Today, there are over 30 million displaced people,³ half of them children. Often exposed to systematic atrocities and without adequate physical protection, they are forced to flee, leaving behind their possessions, their homes and family members. Since this report was commissioned, large segments of the population of Kosovo in the Federal Republic of Yugoslavia were displaced, as well as hundreds of thousands of Angolans affected by the resumption of civil war there, to name just two places.

12. Forced displacement takes place both across and within national boundaries. People forced to leave their country of nationality or permanent residence should enjoy the protection of international refugee law, yet many do not. Internally displaced persons are in principle covered by the laws of their own country as well as by international humanitarian law applicable to victims of non-governmental conflicts and international human rights law.⁴ Nevertheless, guarantees found in international human rights and humanitarian law are often disregarded by the country of origin or by the Government of the receiving state. Non-state actors are often unwilling or unable to meet the protection needs of displaced persons and refugees. This has led to many instances of containment and refoulement of refugees. In other cases, national authorities have been unwilling to acknowledge the existence of internally displaced persons and have obstructed international efforts to assist and protect them.

13. Furthermore, in many recent and current internal armed conflicts, combatants deliberately intimidate, attack and displace local populations to further their pursuit of economic control over natural resources. In such cases combatants rely on, and indeed profit from, civilian displacement.

C. Combatants and armed elements mixed with civilians in camps for refugees and internally displaced persons

14. Despite the promise of temporary refuge, camps do not always guarantee civilians protection. Failure to maintain the purely civilian and humanitarian character of camps means that civilians can find themselves living side by side

³ The Office of the United Nations High Commissioner for Refugees estimates the number of refugees at 13.2 million (The State of the World's Refugees - 1997-1998). The Representative of the Secretary-General for internally displaced persons estimates their number at between 20 and 25 million (E/CN.4/1999/79).

⁴ The rights of internally displaced persons have been outlined in the "Guiding Principles on Internal Displacement", presented to the Commission on Human Rights in 1998 by the Representative of the Secretary-General on internally displaced persons (E/CN.4/1998/53/Add.2, annex).

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with combatants or other armed elements. In such circumstances, relief supplies may be diverted to members of warring factions who do not qualify for international protection or assistance. Moreover, warring factions frequently control the movement of refugees, impeding return or other sustainable solutions.

15. The presence of combatants in internally displaced person and refugee camps can destabilize the situation in an entire region. The most striking example was the infiltration of refugee camps in Zaire (now the Democratic Republic of the Congo) and Rwanda following the end of the civil war in 1994 by the Interhamwe and Impuzamugambi militia and remnants of the former Rwandan Army. Such elements also jeopardize the safety and protection of civilians, especially children, who may be forcibly recruited. Camps in States neighbouring the refugees' home country are often too close to the border and become militarized. They therefore become susceptible to cross-border attacks, military incursions and infiltration.

D. Specific problems faced by children

16. The United Nations Children's Fund estimates that two million children have been killed as a direct result of armed conflict in the course of the last decade. Three times that many have been seriously injured or permanently disabled. Even greater numbers die of malnutrition and disease and more than 300,000 children under 18 years of age have been ruthlessly exploited as soldiers in government armed forces or armed opposition groups in ongoing conflicts.⁵ Inevitably, many of the children recruited into the military are deprived of their basic rights, including those to family unity and education. Countless numbers of children experience grave emotional wounds as a result of their experiences and the events they witness.

17. The Machel report on the impact of armed conflict on children (A/51/306 and Add.1) drew attention to aspects of children's protection in armed conflict that require new policy, programme and operational responses. It drew particular attention to the gross violations of children's rights when they, as soldiers, are made to participate in mutilation campaigns, rape, gender-based violence and sexual abuse.

E. Specific problems faced by women

18. Complex emergencies have a different impact on women and men. While men account for the largest numbers of combatants, women and children are disproportionately represented among civilians affected by conflict. This usually leads to dramatic increases in the number of children and women heads of households, leading to abrupt changes in their roles and increases in their workloads. The breakdown of the social fabric and the disintegration of families during times of armed conflict often leave women and girls especially vulnerable to gender-based violence and sexual exploitation, including rape and forced prostitution. Women also constitute the majority of refugees and

⁵ See report of the Special Representative of the Secretary-General for Children and Armed Conflict of 12 October 1998 (A/53/482, paras. 18-22).

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internally displaced persons: thus the burdens of displacement described above are disproportionately borne by them. Men on the other hand have been the major victims of summary mass executions in a number of recent wars.

F. Denial of humanitarian assistance and humanitarian access

19. Combatants target civilians in conflict by, among other things, attempting to restrict their access to food and/or other forms of life-saving assistance, or, indeed, deliberately starving them. In 1992 in Somalia, for instance, the parties to the conflict deliberately impeded the delivery of essential food and medical supplies, while during the siege of the enclaves in Bosnia and Herzegovina, civilians were systematically deprived of assistance necessary for their survival.

20. In this year alone, restrictions on the access of humanitarian organizations to those in need have put hundreds of thousands at risk in Angola, Kosovo (Federal Republic of Yugoslavia) and Sierra Leone. In the absence of any international presence, civilians affected by the conflicts in these areas are at the mercy of the warring parties and are dependent on them for the supplies they need.

G. Targeting of humanitarian and peacekeeping personnel

21. Humanitarian and peacekeeping personnel have increasingly become targets of organized violence. The protective emblem of the International Red Cross as well as the Red Crescent, and the United Nations flag, which represent the impartiality of relief workers, appear to offer less protection than ever. Threats against relief workers and peacekeeping personnel further restrict the ability of humanitarian organizations to ensure the delivery of assistance to vulnerable populations.

22. In recent years, United Nations staff and other humanitarian workers have lost their lives in Afghanistan, Angola, Bosnia and Herzegovina, Burundi, El Salvador, Ethiopia, Georgia, Haiti, Iraq, the Russian Federation (Chechnya), Rwanda, Sierra Leone, Somalia, the Sudan, Tajikistan and Uganda, while others have been abducted in Bosnia and Herzegovina, Georgia, Guatemala, Liberia, Peru, the Russian Federation (Chechnya), Somalia, the Sudan and Tajikistan. Death, injury or harassment of humanitarian personnel have become almost daily occurrences.

H. Widespread availability of small arms and continued use of anti-personnel landmines

23. The widespread use of small arms, light weapons and anti-personnel landmines has had a significant impact on the scope and level of the violence that affects civilian populations in armed conflict. The absence of effective controls on the transfer of small arms along with their low cost make them popular weapons in today's conflicts. These light and easy-to-use weapons have made it much easier to turn children into soldiers. Their easy availability to untrained combatants has also greatly increased the risks of delivering humanitarian assistance in affected areas.

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24. Millions of unexploded low-cost anti-personnel landmines and other ordnance constitute the deadly legacy of more than two dozen wars. They kill and maim thousands of civilians every year. Landmines also deny the use of land for agriculture, impede the delivery of humanitarian assistance and development aid and disrupt and delay the resettlement and reintegration of returning internally displaced persons and refugees.

I. Humanitarian impact of sanctions

25. Recent experience has shown that sanctions can have a highly negative impact on civilian populations, especially children and women. Sanctions committees established by the Security Council to oversee the implementation of sanctions regimes have recently taken steps to streamline and expedite their procedures for processing humanitarian exemptions. Nonetheless, the collateral effects of such measures continue to give cause for concern in many cases.

26. Regional sanctions and embargoes are of special concern. Often hastily imposed by neighbouring countries without clear guidelines regarding the minimization of their humanitarian impact, regional sanctions have hampered the provision of emergency humanitarian assistance in recent years, particularly in Sierra Leone and Burundi. The impediments to the efficient processing of humanitarian exemptions by regional sanctions authorities have, on several occasions, prevented United Nations humanitarian operations from delivering urgently needed assistance.

III. MAINTAINING PEACE AND SECURITY - THE ROLE OF THE SECURITY COUNCIL IN THE PROTECTION OF CIVILIANS IN SITUATIONS OF ARMED CONFLICT

27. In its presidential statement of 12 February 1999 (S/PRST/1999/6), the Security Council noted that large-scale human suffering is a consequence and sometimes a contributing factor to instability and further conflict. Bearing in mind its primary responsibility for the maintenance of international peace and security, the Council affirmed the need for the international community to assist and protect civilian populations affected by armed conflict. The Council also expressed its willingness to respond, in accordance with the Charter of the United Nations, to situations in which civilians, as such, have been targeted or humanitarian assistance to civilians has been deliberately obstructed.

28. The above statement affirms the intimate connections between systematic and widespread violations of the rights of civilians and breakdowns in international peace and security.

29. It is now generally recognized that the maintenance of international peace and security requires action by the Security Council at all stages of a conflict or potential conflict. Whenever possible, action must be taken to address the root causes of conflict and to prevent disputes from escalating into violence. Where, for whatever reason, these preventive approaches cannot be effectively implemented or have failed, the main thrust of policy must be to minimize the consequences of the violence for civilian populations and to seek to bring hostilities to a close. In the aftermath of war, all efforts must be directed

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at peacekeeping and peace-building, including reconciliation amongst groups pulled apart by the conflict, and the administration of justice to those who have violated international humanitarian or human rights law.

30. In a series of resolutions adopted since 1991, the Security Council has reaffirmed its "primary responsibility for the maintenance of international peace and security", as set out in Article 24 of the Charter. The Council also recognizes that massive and systematic breaches of human rights law and international humanitarian law constitute threats to international peace and security and therefore demand its attention and action.

31. In its resolution 688 (1991), of 5 April 1991, on Iraq, the Security Council recognized that the repression of the civilian population led to consequences that threatened peace and security in the region. In resolution 941 (1994), of 23 September 1994 on Bosnia and Herzegovina, the Council recognized that ethnic cleansing constituted a clear violation of international humanitarian law and posed a threat to the peace effort. In resolution 955 (1994), of 8 November 1994, on Rwanda, the Council indicated that genocide and other systematic widespread and flagrant violations of international humanitarian law constituted a threat to international peace and security. In resolution 1203 (1998), of 24 October 1998, on Kosovo, Federal Republic of Yugoslavia, the Security Council affirmed that the situation within the country's borders constituted a continuing threat to peace and security in the region. Finally, and most recently, resolution 1244 (1999), of 10 June 1999, on Kosovo, Federal Republic of Yugoslavia, reaffirmed respect for sovereignty and territorial integrity but also mandated a United Nations mission to restore and maintain security within the territory of the province.

32. The Security Council's increased concern for the plight of civilians in armed conflict has been reinforced by the frequent briefings it has received on the humanitarian situation in countries affected by conflict, and is further illustrated by the establishment by the Council of international ad hoc criminal tribunals for the former Yugoslavia and Rwanda.

33. Prevention, peace-making, peacekeeping and peace-building are mutually reinforcing and must sometimes take place concurrently if the Security Council is to adopt a comprehensive and integrated approach to protecting civilians in armed conflict. In its presidential statement of 12 February 1999 the Council called for a comprehensive and coordinated approach by Member States and international organizations and agencies to address the problem of civilians in situations of armed conflicts. Indeed it was in precisely this context that the Council requested the present report containing concrete recommendations on ways the Council, acting within its sphere of responsibility, could improve the physical and legal protection of civilians in situations of armed conflict.

34. In the section which follows, I have elaborated a number of specific recommendations for the Council to consider. These recommendations have emerged from broad consultations, including, as requested, with the Inter-Agency Standing Committee. They cover action at all stages of a conflict and include a wide range of activities relating to both legal and physical protection. They range from measures to promote adherence to international law, through political

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and diplomatic initiatives intended to influence the behaviour of parties to conflicts, to measures of enforcement under Chapter VII of the Charter.

IV. RECOMMENDED MEASURES TO STRENGTHEN LEGAL PROTECTION

35. The protection of civilians in armed conflict would be largely assured if combatants respected the provisions of international humanitarian and human rights law. The recommendations in this section are therefore aimed at identifying ways in which the Security Council can promote full respect for international humanitarian, human rights and refugee law, by States and non-State actors, and particularly by parties to conflicts. The recommendations also include proposals for action by the Council to ensure that violations of these instruments are addressed through appropriate judicial processes.

A. Ratification and implementation of international instruments

36. International instruments are essential tools for the legal protection of civilians in armed conflict and should therefore be a major focus of the Security Council's efforts. These efforts should be focused initially on encouraging Member States to ratify the major instruments, to take steps to ensure their implementation in practice and to heighten awareness and acceptance of these fundamental international norms within national armed forces and police and among all sectors of society. In order to promote a "climate of compliance", Member States should take advantage of the technical services of United Nations bodies and other appropriate organizations, including the International Committee of the Red Cross, to support the incorporation of these international instruments into national law, to develop strong national institutions charged with the dissemination, monitoring and enforcement of these instruments and to establish systematic training programmes for armed forces and police in international humanitarian, human rights and refugee law, including child rights and gender related provisions. In this context, Member States could usefully exchange information about best practices with respect to the implementation of the major instruments of international humanitarian, human rights and refugee law.⁶

⁶ The major instruments in international humanitarian law are the four Geneva Conventions (1949) and the two Additional Protocols (1977), of which the latter covers internal armed conflicts. The major human rights treaties are the International Covenant on Civil and Political Rights (1966), the International Covenant on Economic, Social and Cultural Rights (1966), the Convention on the Prevention and Punishment of the Crime of Genocide (1948), the Convention on the Elimination of All Forms of Discrimination against Women (1979), the Convention on the Rights of the Child (1989), the International Convention on the Elimination of All Forms of Racial Discrimination (1965) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984). The major instruments of refugee law are the Convention on the Status of Refugees (1951) and its Protocol (1967). Other relevant instruments are the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction (1997), the Convention on the Safety of United Nations and Associated Personnel (1994), the Statute of the

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I recommend that the Security Council:

1. Urge Member States to ratify the major instruments of international humanitarian law, human rights law and refugee law, to withdraw reservations and to take all appropriate legislative, judicial and administrative measures to implement these instruments, including dissemination among all sectors of society, and to report to the Council on action taken in this regard.

2. Call on Member States and non-state actors, as appropriate, to adhere to international humanitarian, human rights and refugee law, particularly the non-derogable rights enumerated in article 4 of the International Covenant on Civil and Political Rights.⁷

B. Accountability for war crimes

37. Widespread and systematic violations of international humanitarian and human rights law have too frequently not been prosecuted by domestic authorities. The Security Council's establishment of the ad hoc tribunals for the former Yugoslavia and Rwanda constituted a major step forward in addressing this failing and in combating the culture of impunity. The adoption of the Statute of the International Criminal Court in 1998 provides for the establishment of a global enforcement mechanism to address impunity, which may also serve as a potential deterrent to future violators. The apprehension and trial of indicted war crimes suspects is an indispensable component in the enforcement of international law and justice.

38. In this context, I also recall the recommendation, which I made to the Security Council in my report on the causes of conflict and the promotion of durable peace and sustainable development in Africa (A/52/871), that combatants be held financially liable for their victims under international law where civilians are made the deliberate target of aggression, and that international legal machinery be developed to facilitate efforts to find, attach and seize the assets of transgressing parties and their leaders.

I recommend that the Security Council:

3. In cases of non-compliance, consider using the enforcement measures contained in the Charter of the United Nations under Chapter VII, to induce compliance with orders and requests of the two existing ad hoc tribunals for the

International Criminal Court (1998), the Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954) and its Protocol (1999), and the Convention on Conventional Weapons (1980) and its four Additional Protocols.

⁷ Article 4 of the International Covenant on Civil and Political Rights declares non-derogable the right against discrimination on grounds of race, colour, sex, language, religion or social origin under international humanitarian law in times of armed conflict. The most frequent violations of non-derogable rights are summary and arbitrary executions, torture, cruel and degrading treatments and slavery (forced labour).

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former Yugoslavia and Rwanda, respectively, for the arrest and surrender of accused persons.

4. Urge Member States to ratify the Statute of the International Criminal Court as a concrete measure aimed at enforcing respect for international humanitarian law and human rights law.⁸

5. Pending the establishment of the International Criminal Court, encourage the development of judicial and investigative mechanisms with national and international components, which may be used when the prosecution of those responsible for genocide, crimes against humanity and war crimes in either national or international tribunals appears unlikely given the unwillingness or inability of the parties involved.

6. Urge Member States to adopt national legislation for the prosecution of individuals responsible for genocide, crimes against humanity and war crimes. Member States should initiate prosecution of persons under their authority or on their territory for grave breaches of international humanitarian law on the basis of the principle of universal jurisdiction and report thereon to the Security Council.

C. Gaps in existing international law

1. Internal displacement

39. In 1992, in response to a request by the Commission on Human Rights, the then Secretary-General appointed a Representative on Internally Displaced Persons, whose objective was to examine the protection of internally displaced persons. In the absence of an international legal framework spelling out the rights and the freedoms of internally displaced persons specifically, the Representative compiled the Guiding Principles on Internal Displacement, which are based on existing instruments in international humanitarian and human rights law, and which were presented to the Commission on Human Rights in 1998 (E/CN.4/1998/53/Add.2, annex).

I recommend that the Security Council:

7. In cases of massive internal displacement, encourage States to follow the legal guidance provided in the Guiding Principles on Internal Displacement.

⁸ As of June 1999, only three of the 82 signatory States to the Statute of the International Criminal Court have presented their ratification instrument. An additional 57 ratifications are required for the Statute to enter into force.

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2. Minimum age of recruitment in the armed forces and other armed groups

40. The internationally accepted minimum age for recruitment and participation in hostilities is currently 15 years.⁹ The Statute of the International Criminal Court (1998) classifies the conscription, enlistment or use of children under the age of 15 as a war crime. The International Labour Organization Worst Forms of Child Labour Convention (1999) prohibits the forced or compulsory recruitment of children under 18 for use in armed conflict, but permits voluntary enlistment as well as recruitment for purposes other than combat. The African Charter on the Rights and Welfare of the Child (1990) prohibits the recruitment or use of children under age 18. None of these three Conventions are in force at present and the efforts of the Commission on Human Rights to introduce and adopt an optional protocol to the Convention on the Rights of the Child, aimed at raising the minimum age for recruitment and participation in hostilities to 18, have yet to succeed.

41. Though national legislation in most Member States codifies 18 as the age of obligatory military service, unfortunately this is seldom observed in time of armed conflict. An additional complication derives from the fact that most child soldiers participating in armed conflict do so within the ranks of non-state armed groups, where the line of command and responsibility is often unclear.

42. In October 1998, I announced a minimum age requirement for United Nations peacekeepers being made available to the United Nations by Member States and asked contributing Governments to send in their national contingent's troops preferably not younger than 21 years of age, and in no case less than 18. In addition, Member States were also requested not to send civilian police and military observers younger than 25 years of age to peacekeeping operations.¹⁰ This decision was taken to ensure that the use of uniformed personnel by the United Nations is an example for police and military forces worldwide.

I recommend that the Security Council:

8. Urge Member States to support the proposal to raise the minimum age for recruitment and participation in hostilities to 18, and accelerate the drafting of an optional protocol on the situation of children in armed conflict to the Convention on the Rights of the Child for consideration by the General Assembly.

⁹ It should be noted, however, that article 38.3 of the Convention on the Rights of the Child states that States Parties shall refrain from recruiting any person who has not attained the age of 15 years into their armed forces. In recruiting among those persons who have attained the age of 15 but who have not attained the age of 18 years, States Parties shall endeavour to give priority to those who are oldest.

¹⁰ See the daily press briefing of the Office of the Spokesman of the Secretary-General of 29 October 1998.

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9. Demand that non-state actors involved in conflict not use children below the age of 18 in hostilities, or face the imposition of targeted sanctions if they do not comply.

3. Safety of humanitarian personnel

43. The Convention on the Safety of United Nations and Associated Personnel of 1994, which entered into force on 15 January 1999, covers those United Nations and associated personnel engaged in operations specifically authorized by the Security Council or the General Assembly. I believe that there is an emerging consensus that the scope of the Convention of 1994 should be extended to cover other categories of United Nations and associated personnel not at present covered under the Convention, including locally recruited staff. States should also consider adopting appropriate national legislation on this matter.

I recommend that the Security Council:

10. Urge Member States which have not yet done so to ratify the 1994 Convention on the Safety of United Nations and Associated Personnel, and encourage States which have already ratified to implement it fully.

11. Invite the General Assembly to urgently pursue the development of a protocol to the 1994 Convention, which would extend the scope of legal protection to all United Nations and associated personnel.

V. RECOMMENDED MEASURES TO STRENGTHEN PHYSICAL PROTECTION

44. In addition to the application of legal measures, the Security Council can promote the protection of civilians in conflict both by political and diplomatic measures as well as by peacekeeping or enforcement measures under Chapters VI, VII or VIII of the Charter. The recommendations in this chapter therefore seek to identify ways in which the Council can strengthen the physical protection of civilians through a wide range of measures, which may be introduced at different stages of a conflict.

A. Conflict prevention

45. The primary purpose of the United Nations, as stated in Article 1.1 of the Charter, is "to maintain peace and security by the prevention and removal of threats to the peace". Given that the Security Council is the primary organ responsible for the maintenance of international peace and security, it is vital that it devote greater attention to conflict prevention and give effective leadership and strong backing to efforts in this field. In this context, my July 1997 report on United Nations reform stressed that greater emphasis should be placed on timely and adequate prevention. The United Nations of the twenty-first century must increasingly become a focus of preventive measures.

46. While the causes of conflict are complex and need to be addressed in a comprehensive manner, there are a number of steps which the Council could take, acting within its sphere of responsibility, to identify potential conflict situations much sooner than is now the case and to forestall the outbreak of

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hostilities. For example, early warning mechanisms are widely regarded as serving an important role in conflict prevention. Timely and adequate response to early warning will enhance the chances of preventing outbreaks of armed conflict.

47. The United Nations preventive deployment force in the former Yugoslav Republic of Macedonia is a good example of effective early action for conflict prevention. The Council should consider the use of such deployment in other situations. Preventive deployments will be of particular value in situations where the legacy of past conflict has increased the risk of mass violations of human rights. It is also important to bear in mind that while mass killings and atrocities can break out with fearsome rapidity it is usually only after considerable planning and pre-deployment of militia and other forces.

I recommend that the Security Council:

12. **Consider deployment in certain cases of a preventive peacekeeping operation, or of another preventive monitoring presence.**
13. **Increase its use of relevant provisions in the Charter, such as Articles 34 to 36, by investigating disputes at an early stage, inviting Member States to bring disputes to the Security Council's attention, and recommending appropriate procedures for dealing with disputes; and strengthen the relevance of Article 99 of the Charter by taking concrete action in response to threats against peace and security as these are identified by the Secretariat.**
14. **Establish Security Council working groups relating to certain specific volatile situations to improve the understanding of the causes and implications of conflict, as well to provide a consistent forum in which to consider options to prevent the outbreak of violence in each case.**
15. **Make use of the human rights information and analysis emanating from independent treaty body experts and mechanisms of the Commission on Human Rights, as well as other reliable sources, as indicators for potential preventive action by the United Nations.**

B. Confidence-building

1. Media

48. The role of the mass media in armed conflict needs special attention. The genocide in Rwanda and the crimes against humanity in Bosnia and Herzegovina were triggered in part by nationalistic and ethnocentric hate campaigns propagated through the mass media. Efforts to address the problem of hate media are constrained by concerns relating to national sovereignty and freedom of the press. Yet the obligation to take all possible action to prevent the open incitement to violence against particular groups is self-evident. Accordingly, I shall instruct relevant departments at Headquarters, and my representatives and the resident coordinators in countries affected by this phenomenon, to encourage and support objective broadcasting or other media initiatives, including measures to dispel rumours, counter misinformation and promote the free exchange of information. I have also decided to launch an international

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effort to explore appropriate responses to "hate media" that seek to incite violence against civilians.

I recommend that the Security Council:

16. **In situations of ongoing conflict, ensure that, whenever required, appropriate measures are adopted to control or close down hate media assets.**
17. **Ensure that United Nations missions aimed at peace-making, peacekeeping and peace-building include a mass media component that can disseminate information about international humanitarian law and human rights law, including peace education and children's protection, while also giving objective information about the activities of the United Nations, and encourage authorized regional missions to include such a capacity.**

2. Other mechanisms

49. In recent years a number of different types of confidence-building measures have been tried in the immediate post-conflict peace-building phase. These have included, inter alia, measures to encourage visits and exchanges between members of different groups previously at war; cultural and sporting events; adjustments to regulations relating to the issuance of official documents such as passports, identification cards and vehicle license plates and conferences and symposia of professional and technical personnel from different regions of the affected country. Some of these activities are also relevant in the early stages of hostilities before conflict becomes entrenched, or as a means of breaking through an impasse during conflict resolution negotiations. I have therefore decided to develop a field manual of good practice, giving details of successful confidence-building measures in peace-building operations, for use in future such operations.

50. In the field of confidence-building the Council may find value in collaboration with non-governmental organizations and other civil society actors, which offer expertise and added value in these fields.

C. Humanitarian access

51. It is the obligation of States to ensure that affected populations have access to the assistance they require for their survival. If a State is unable to fulfil its obligation, the international community has a responsibility to ensure that humanitarian aid is provided. The rapid deployment of humanitarian assistance operations is critical when responding to the needs of civilians affected by armed conflict. Effective and timely humanitarian action requires unimpeded access to those in need. Thus, humanitarian organizations are involved on a daily basis in negotiations with the parties to conflicts to obtain and maintain safe access to civilians in need, as well as guarantees of security for humanitarian personnel. In order to fulfil this task, humanitarian actors must be able to maintain a dialogue with relevant non-state actors without thereby lending them any political legitimacy.

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I recommend that the Security Council:

18. **Underscore in its resolutions, at the onset of a conflict, the imperative for civilian populations to have unimpeded access to humanitarian assistance and for concerned parties, including non-state actors, to cooperate fully with the United Nations humanitarian coordinator in providing such access, as well as to guarantee the security of humanitarian organizations, in accordance with the principles of humanity, neutrality and impartiality, and insist that failure to comply will result in the imposition of targeted sanctions.**

19. **Urge neighbouring Member States to ensure access for humanitarian assistance and call on them to bring any issues that might threaten the right of civilians to assistance to the attention of the Security Council as a matter affecting peace and security.**

D. Special measures for children and women

52. In the Council's comprehensive resolution of 25 August 1999 on the item children and armed conflict, the Council noted, *inter alia*, recent efforts to bring to an end the use of children as child soldiers, in particular International Labour Organization Convention No. 182, which prohibits forced or compulsory labour. The Council also noted the Rome Statute of the International Criminal Court, in which conscripting or enlisting children under the age of 15 or using them to participate actively in hostilities is characterized as a war crime. The Council strongly condemned the targeting of children in situations of armed conflict and called upon all parties to comply strictly with their obligations under the United Nations Convention on the Rights of the Child, and stressed the responsibility of all States to bring an end to impunity. The Council's recognition of the importance of child protection has created a favourable environment for the consideration of new concrete measures in this field.

53. The particular vulnerability of women in modern armed conflict has already been described. Measures to address this vulnerability need to be taken at all stages of the conflict. I would ask the agencies concerned to establish monitoring and reporting systems that include the documentation of violations against women and children in conflict situations.

I recommend that the Security Council:

20. **Ensure, as appropriate, that the special protection and assistance requirements of children and women are fully addressed in all peacekeeping and peace-building operations.**

21. **Systematically require parties to conflicts to make special arrangements to meet the protection and assistance requirements of children and women. These could include the promotion of "days of immunization" or similar initiatives.**

E. Targeted sanctions

54. The continued efforts by Member States to develop more targeted sanctions regimes are welcome. The concept of targeted sanctions,¹¹ including financial sanctions, such as freezing of overseas assets, trade embargoes on arms and luxury goods and travel bans constitutes a potentially valuable means for pressuring targeted elites, while minimizing the negative humanitarian impact on vulnerable civilian populations that has been a characteristic of comprehensive economic sanctions.¹² In collaboration with a number of Member States and civil society organizations, I am committed to continuing a number of ongoing efforts to improve the efficacy of targeted sanctions.

I recommend that the Security Council:

22. **Make greater use of targeted sanctions to deter and contain those who commit egregious violations of international humanitarian and human rights law, as well as those parties to conflicts which continually defy the resolutions of the Security Council, thereby flouting its authority.**

23. **Establish a permanent technical review mechanism of United Nations and regional sanctions regimes which can use information provided by Council members, relevant financial institutions, the Secretariat, agencies and other humanitarian actors to ascertain the probable impact of sanctions on civilians.¹³**

¹¹ Targeted sanctions, also referred to as smart sanctions, include: the freezing of financial assets of regime members or elites who support them; suspension of credits and grant aid; denial and limitation of access to overseas financial markets; trade embargoes on arms and luxury goods; flight bans; political sanctions such as diplomatic isolation and withdrawal of accreditation; denial of overseas travel, visas and educational opportunities to regime members and their families. Targeted sanctions are a less blunt instrument than comprehensive sanctions, thereby minimizing humanitarian costs, the disruption of non-military trade, the likelihood of a black market emerging, additional humanitarian aid requirements and a negative impact on social infrastructures.

¹² I am encouraged that recent resolutions of the Security Council establishing or modifying existing sanctions regimes (e.g. the Sudan, Angola, Sierra Leone), and, most recently, the arms embargo in the case of the Federal Republic of Yugoslavia, have been designed to include measures with little or no humanitarian impact. I also welcome recent efforts of the Council to address the humanitarian aspect of sanctions in Iraq pursuant to Council resolution 986 (1995). Moreover, the members of the Security Council recently agreed on a series of practical proposals to improve the work of the Sanctions Committee in this area, reported in the note by the President of the Security Council of 29 January 1999 (S/1999/92). I look forward to further progress on this matter.

¹³ The most vulnerable groups are defined as children, pregnant or nursing mothers, the elderly and the sick and infirm.

24. Further develop standards and rules to minimize the humanitarian impact of sanctions on the basis of proposals made by the President of the Council to the sanctions committees, and ensure especially that sanctions are not imposed without provision for obligatory, immediate and enforceable humanitarian exemptions.

25. Request regional organizations or groups of countries to submit complete information regarding the establishment of proper humanitarian exemption mechanisms and clearance procedures prior to authorizing the imposition of regional sanctions. The Council may also wish to monitor the ability of regional sanctions authorities to implement the exemptions and clear shipments of humanitarian goods and to establish procedures for exercising its authority to address inadequacies.

F. Small arms and anti-personnel landmines

55. The proliferation and abuse of light weapons and small arms fuel conflicts, exacerbate the suffering of civilian victims and contribute to the breakdown of societies. A number of international and regional initiatives are seeking to address this difficult problem. I fully endorse these initiatives. Controlling the availability of arms is an essential prerequisite for a successful peace-building process. It requires a multi-dimensional approach involving demobilization, rehabilitation of combatants, law enforcement, measures to stop illegal trafficking and regulations for the legal registration and use of arms.

56. Landmines continue to maim and kill thousands of civilians each year. Unexploded ordnance, particularly cluster bombs, also kill and maim civilians long after they are used. Although a large number of States have ratified the Ottawa Convention on landmines, many States have not and some require assistance from the United Nations to meet their treaty obligations.

I recommend that the Security Council:

26. Impose arms embargoes in situations where civilians and protected persons are targeted by the parties to the conflict, or where the parties are known to commit systematic and widespread violations of international humanitarian and human rights law, including the recruitment of child soldiers; and urge Member States to enforce these embargoes in their own national jurisdictions.

27. Encourage Member States to give political and financial support and assistance to other States to facilitate compliance with the Ottawa Convention.

G. Peacekeeping

57. In the past, United Nations peacekeeping operations have performed a wide range of tasks related to the protection of civilians, including: discouraging abuses of civilian populations; providing stability and fostering a political process of reconciliation; supporting institution-building efforts, including in such areas as human rights and law enforcement; protecting humanitarian workers and delivering humanitarian assistance; maintaining the security and neutrality of refugee camps, including separation of combatants and non-combatants;

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maintaining "safe zones" for the protection of civilian populations; deterring and addressing abuses including through the arrest of war criminals.

58. In the past, difficulties have arisen where it has been foreseen that elements of a peacekeeping mandate would be combined with a coercive or enforcement role, where mandates were insufficiently clear or inadequate resources were assigned to the task. It is therefore important to make a clear distinction between those tasks which can be accomplished with a modest presence, those which require a credible deterrent capacity, and those which require enforcement action.

59. The Security Council's increasing emphasis on the integration of human rights and humanitarian concerns in its actions to promote peace and resolve conflicts is a recognition of the need for a comprehensive approach to peacekeeping, which also helps to strengthen the protection of civilians. In its most recent report, the Special Committee on Peacekeeping Operations noted that the scope of peacekeeping has to be multi-disciplinary in nature, not solely restricted to military tasks, but also include civilian police activities, humanitarian assistance, disarmament and demobilization measures, actions against the proliferation of small arms and light weapons and human rights monitoring.

1. Provision of resources and support

60. As a general rule, the effectiveness of any operation bears a strong relation to its capacity to deploy swiftly the resources necessary to fulfil a given mandate. If an operation arrives in the field without the necessary capacity, this not only limits its practical effectiveness, but also undermines its political viability. A mission that is perceived as strong from the beginning of its deployment is far less likely to be tested than one which is perceived as initially vulnerable or ineffective.

I recommend that the Security Council:

28. Take steps to strengthen the Organization's capacity to plan and deploy rapidly. This includes enhancing the participation in the United Nations Stand-by Arrangements System, including by increasing the numbers of civilian police and specialized civil administration and humanitarian personnel. Rapidly deployable units of military and police are also required. Also essential is the capacity to quickly deploy a Mission headquarters.

29. Ensure that these units are trained in human rights and international humanitarian law, including child and gender related provisions, civilian-military coordination and communications and negotiation skills.

2. Compliance with international standards in United Nations operations

61. The presence and activities of United Nations peacekeepers in volatile areas throughout the world have contributed significantly to the protection of civilians in armed conflict. Countless young men and women have done so selflessly, some having given their lives. In order to protect civilians in armed conflict, as well as to protect the legitimacy and respect of peacekeeping

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operations and their personnel, we need to address those cases in which peacekeepers are involved in unacceptable behaviour, including abuses of the civilian population. I have made available to troop-contributors a number of texts on human rights obligations and codes of conduct. It is important that national training programmes give appropriate emphasis to these obligations. I have also recently promulgated a Secretary-General's bulletin on the observance of international humanitarian law by members of United Nations forces, instructing them on the basic principles and rules governing means and methods of warfare and the protection of civilians and other protected persons. I shall count on the Security Council to lend appropriate support to my future requests to include ombudspersons and, where appropriate, investigatory capacities in United Nations peacekeeping operations.

I recommend that the Security Council:

30. Underscore the importance of compliance with international humanitarian and human rights law in the conduct of all peacekeeping operations by urging that Member States disseminate instructions among their personnel serving in United Nations peacekeeping operations and among those participating in authorized operations conducted under national or regional command and control.

31. Support a public "ombudsman" with all peacekeeping operations to deal with complaints from the general public about the behaviour of United Nations peacekeepers and establish an ad hoc fact-finding commission, as necessary, to examine reports on alleged breaches of international humanitarian and human rights law committed by members of United Nations forces.

32. Request the deploying Member States to report to the United Nations Secretariat on measures taken to prosecute members of their armed forces who have violated international humanitarian and human rights law while in service of the United Nations.

33. Where appropriate, establish a peacekeeping presence early in the movement of refugees and displaced persons, in order to ensure that they are able to settle in camps free from the threat of harassment or infiltration by armed elements.

3. Cooperation with other actors

The United Nations welcomes the possibility of collaboration with regional and sub-regional efforts whenever this will assist in conflict prevention, management or resolution. At the same time, certain limitations and concerns are evident. In many cases, regional organizations will face planning, structural or financial limitations that are graver than those facing the United Nations. This could lead to unequal response to conflict in different places. There is also concern that, where action is authorized without United Nations oversight, inappropriate actions could be taken in the name of the Organization.

In the context of its follow-up to the report on the causes of conflict and the promotion of durable peace and sustainable development in Africa, the Security Council recognized the potential for regional organizations to contribute and called for renewed efforts to enhance their capacity. At the

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same time, the Security Council identified a number of measures which could help address some of the concerns noted above (S/PRST/1998/35). The Security Council stressed the need for regional operations to ensure that their personnel respect and observe international law, including humanitarian, human rights and refugee law. In this context, the Security Council underlined its support for the inclusion of civilian elements, for instance in dealing with political and human rights issues; and recognized the importance of the contribution that can be made by co-deployment of a United Nations peacekeeping force.

I recommend that the Security Council:

34. Confirm that regional organizations have the capacity to carry out an operation according to international norms and standards before authorizing their deployment, and put in place mechanisms whereby the Council can effectively monitor such operations.

H. Separation of combatants and armed elements from civilians in camps

64. When the national law enforcement system of a host-State is unable to separate combatants or armed elements from civilians in camps designated for internally displaced persons or refugees, it is essential that international efforts are made to restore the humanitarian nature of such camps. This issue was considered by the Council during its debate of the Secretary-General's report on the protection of humanitarian assistance for refugees and others in conflict situations (S/1998/883). As a result of these consultations, a number of possible options have been proposed to the Council, depending on the specific circumstances in each situation. The modalities for the implementation of the following recommendations will require further consultations between the Department of Peacekeeping Operations, the Office of the United Nations High Commissioner for Refugees and troop-contributing countries.

I recommend that the Security Council:

35. Deploy international military observers to monitor the situation in camps for internally displaced persons and refugees when the presence of arms, combatants and armed elements is suspected. If such elements are found and national forces are unable or unwilling to intervene, consider the range of options I have outlined in S/1998/883. This could involve deploying regional or international military forces that are prepared to take effective measures to protect civilians. Such measures could include compelling disarmament of the combatants or armed elements.

36. Mobilize international support for national security forces, from logistical and operational assistance to technical advice, training and supervision where necessary.

37. Mobilize international support for the relocation of camps too close to the border with refugees' countries of origin, to a safe distance away from the border.

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I. Disarmament and demobilization

65. The abundance of armaments available to conflicting parties, especially small arms and light weapons, is a major contributing factor to the number and intensity of armed conflicts around the globe, as well as to violations of signed peace settlements. The disarming and demobilizing of combatants must be a top priority in any United Nations peacekeeping/peace-building operation. I refer to the Security Council presidential statement of 8 July 1999 for valuable guidelines (S/PRST/1998/21).

I recommend that the Security Council:

38. **Ensure that peace agreements and the mandates of all United Nations peacekeeping missions include, where appropriate, specific measures for disarmament, demobilization and destruction of unnecessary arms and ammunition, and that early and adequate resources are made available. In this regard, particular attention should be given to demobilization and reintegration of child soldiers.**

J. Humanitarian zones, security zones and safe corridors

66. Humanitarian zones, security zones and safe corridors address the issue of protection through the designation of specific areas or routes, which are either neutralized by an arrangement involving consent between the parties (humanitarian zones) or secured by force (security zones). Recent experiences, particularly in Bosnia and Herzegovina, demonstrate the need for greater understanding of the humanitarian, security and political implications of the establishment of zones aimed at protecting civilians.

I recommend that the Security Council:

39. **Establish, as a measure of last resort, temporary security zones and safe corridors for the protection of civilians and the delivery of assistance in situations characterized by the threat of genocide, crimes against humanity and war crimes against the civilian population, subject to a clear understanding that such arrangements require the availability, prior to their establishment, of sufficient and credible force to guarantee the safety of civilian populations making use of them, and ensure the demilitarization of these zones and the availability of a safe-exit option.**

K. Intervention in cases of systematic and widespread violations of international law

67. Protection mechanisms rely first and foremost on the willingness of State and non-State actors to comply with applicable international law. In situations where the parties to the conflict commit systematic and widespread breaches of international humanitarian and human rights law, causing threats of genocide, crimes against humanity and war crimes, the Security Council should be prepared to intervene under Chapter VII of the Charter. The use of coercive action should be seen as a mechanism of last resort to protect the civilian population from immediate threats to their lives and to ensure the safe passage of humanitarian convoys.

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I recommend that the Security Council:

40. **In the face of massive and ongoing abuses, consider the imposition of appropriate enforcement action. Before acting in such cases, either with a United Nations, regional or multinational arrangement, and in order to reinforce political support for such efforts, enhance confidence in their legitimacy and deter perceptions of selectivity or bias toward one region or another, the Council should consider the following factors:**

(a) **The scope of the breaches of human rights and international humanitarian law including the numbers of people affected and the nature of the violations;**

(b) **The inability of local authorities to uphold legal order, or identification of a pattern of complicity by local authorities;**

(c) **The exhaustion of peaceful or consent-based efforts to address the situation;**

(d) **The ability of the Security Council to monitor actions that are undertaken;**

(e) **The limited and proportionate use of force, with attention to repercussions upon civilian populations and the environment.**

VI. OBSERVATIONS

68. In the present report I have painted a stark picture of the realities faced by civilians in armed conflict and the challenges these situations present to the international community. I have recommended clear action on the part of the Security Council to compel parties to conflict to respect the rights guaranteed to civilians by international law and convention. The plight of civilians is no longer something which can be neglected, or made secondary because it complicates political negotiations or interests. It is fundamental to the central mandate of the Organization. The responsibility for the protection of civilians cannot be transferred to others. The United Nations is the only international organization with the reach and authority to end these practices. I urge the Security Council to commit itself to this task.

69. I have been pleased to observe that the process of United Nations reform over the past two years has led to general recognition of the need for a comprehensive and integrated approach to handling crises, bringing together political, humanitarian, development and human rights actors within an agreed framework for action. In these efforts, it is clearly the Security Council which must play the leading role. We look to the Council to chart the overall approach to the resolution of crises and encourage the closest cooperation and coordination between all components of the United Nations system, regional forces, bilateral actors, Governments and non-State actors in the affected countries, as well as civil society, including international non-governmental organizations and the private sector. I welcome the increased interest of the

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Council in humanitarian aspects of conflicts and look forward to even closer cooperation in the future.

70. In this report I have provided concrete recommendations to the Council covering a very wide range of initiatives. It is my belief that each of them can contribute to the protection of civilians in some or all situations. However, I wish to draw particular attention to nine proposals which I believe to be of particular importance. First are two recommendations intended to permanently strengthen the capacity of the Council and the Organization to protect civilians in armed conflict. These are:

1. Take steps to strengthen the Organization's capacity to plan and deploy rapidly. This includes enhancing the participation in the United Nations Stand-by Arrangements System, including by increasing the numbers of civilian police and specialized civil administration and humanitarian personnel. Rapidly deployable units of military and police are also required. Also essential is the capacity to quickly deploy a Mission headquarters. (Recommendation 28)
2. Establish a permanent technical review mechanism of United Nations and regional sanctions which can use information provided by Council members, relevant financial institutions, the Secretariat, agencies and other humanitarian actors to ascertain the probable impact of sanctions on civilians. (Recommendation 23)

71. Second are four recommendations which could be employed by the Council upon receipt of information indicating that the outbreak of violence aimed at civilians may be imminent. These are:

3. Impose arms embargoes in situations where civilians and protected persons are targeted by the parties to the conflict, or where the parties are known to commit systematic and widespread violations of international humanitarian and human rights law, including the recruitment of child soldiers; and urge Member States to enforce these embargoes in their own national jurisdictions. (Recommendation 26)
4. Consider deployment in certain cases of a preventive peacekeeping operation, or of another preventive monitoring presence. (Recommendation 12)
5. Make greater use of targeted sanctions to deter and contain those who commit egregious violations of international humanitarian and human rights law, as well as those parties to conflicts which continually defy the resolutions of the Council, thereby flouting its authority. (Recommendation 22)
6. Deploy international military observers to monitor the situation in camps for internally displaced persons and refugees when the presence of arms, combatants and armed elements is suspected; and if such elements are found and national forces are unable or unwilling to intervene, deploy regional or international military forces that are prepared to take effective measures to compel disarmament of the combatants or armed elements. (Recommendation 35)

72. Finally, I put forward three recommendations intended to alleviate the suffering of civilians in situations where conflict has already broken out and where civilians are being targeted. These are:

7. **Underscore in its resolutions, at the onset of a conflict, the imperative for civilian populations to have unimpeded access to humanitarian assistance and for concerned parties including non-state actors, to cooperate fully with the United Nations humanitarian coordinator in providing such access, as well as to guarantee the security of humanitarian organizations, in accordance with the principles of humanity, neutrality and impartiality, and insist that failure to comply will result in the imposition of targeted sanctions.** (Recommendation 18)
8. Ensure that, whenever required, peacekeeping and peace enforcement operations are authorized and equipped to control or close down hate media assets. (Recommendation 16)
9. In the face of massive and ongoing abuses, consider the imposition of appropriate enforcement action. Before acting in such cases, either with a United Nations, regional or multinational arrangement, and in order to reinforce political support for such efforts, enhance confidence in their legitimacy and deter perceptions of selectivity or bias toward one region or another, the Council should consider the following factors:

- (a) The scope of the breaches of human rights and international humanitarian law, including the numbers of people affected and the nature of the violations;
- (b) The inability of local authorities to uphold legal order, or identification of a pattern of complicity by local authorities;
- (c) The exhaustion of peaceful or consent-based efforts to address the situation;
- (d) The ability of the Security Council to monitor actions that are undertaken;
- (e) The limited and proportionate use of force, with attention to repercussions upon civilian populations and the environment. (Recommendation 40)

73. Despite the precedence of law, norms and principles, physical security often needs to be assured before legal protection. The Council must act rapidly to make this principle a reality. I welcome the Council's call for this report. I sincerely hope that the Council will give its full attention to consideration of all the recommendations in it. It will be important to establish an agreed mechanism and timetable for follow-up and review. I stand ready to report regularly to the Council on progress achieved.

**Secretary-General's Bulletin, Observance by United
Nations forces of international humanitarian law,
ST/SGB/1999/13, 6 August 1999**



Secretariat

6 August 1999

Secretary-General's Bulletin

Observance by United Nations forces of international humanitarian law

The Secretary-General, for the purpose of setting out fundamental principles and rules of international humanitarian law applicable to United Nations forces conducting operations under United Nations command and control, promulgates the following:

Section 1 Field of application

- 1.1 The fundamental principles and rules of international humanitarian law set out in the present bulletin are applicable to United Nations forces when in situations of armed conflict they are actively engaged therein as combatants, to the extent and for the duration of their engagement. They are accordingly applicable in enforcement actions, or in peacekeeping operations when the use of force is permitted in self-defence.
- 1.2 The promulgation of this bulletin does not affect the protected status of members of peacekeeping operations under the 1994 Convention on the Safety of United Nations and Associated Personnel or their status as non-combatants, as long as they are entitled to the protection given to civilians under the international law of armed conflict.

Section 2 Application of national law

The present provisions do not constitute an exhaustive list of principles and rules of international humanitarian law binding upon military personnel, and do not prejudice the application thereof, nor do they replace the national laws by which military personnel remain bound throughout the operation.

Section 3 Status-of-forces agreement

In the status-of-forces agreement concluded between the United Nations and a State in whose territory a United Nations force is deployed, the United Nations undertakes to ensure that the force shall conduct its operations with full respect for the principles and rules of the general convention applicable to the conduct of military personnel. The United Nations also undertakes to ensure that members of the military personnel of the force are fully acquainted with the principles and rules of those international instruments. The obligation to respect the said principles and rules is applicable to United Nations forces even in the absence of a status-of-forces agreement.

Section 4 Violations of international humanitarian law

In case of violations of international humanitarian law members of the military personnel of a United Nations force are subject to prosecution in their national courts.

Section 5 Protection of the civilian population

- 5.1 The United Nations force shall make a clear distinction at all times between civilians and combatants and between civilian objects and military objectives. Military operations shall be directed only against combatants and military objectives. Attacks on civilians or civilian objects are prohibited.

- 5.2 Civilians shall enjoy the protection afforded by this section, unless and for such time as they take a direct part in hostilities.

5.3 The United Nations force shall take all feasible precautions to avoid, and in any event to minimize, incidental loss of civilian life, injury to civilians or damage to civilian property.

5.4 In its area of operation, the United Nations force shall avoid, to the extent feasible, locating military objectives within or near densely populated areas, and take all necessary precautions to protect the civilian population, individual civilians and civilian objects against the dangers resulting from military operations. Military installations and equipment of peacekeeping operations, as such, shall not be considered military objectives.

5.5 The United Nations force is prohibited from launching operations of a nature likely to strike military objectives and civilians in an indiscriminate manner, as well as operations that may be expected to cause incidental loss of life among the civilian population or damage to civilian objects that would be excessive in relation to the concrete and direct military advantage anticipated.

5.6 The United Nations force shall not engage in reprisals against civilians or civilian objects.

Section 6 Means and methods of combat

6.1 The right of the United Nations force to choose methods and means of combat is not unlimited.

6.2 The United Nations force shall respect the rules prohibiting or restricting the use of certain weapons and methods of combat under the relevant instruments of international humanitarian law. These include, in particular, the prohibition on the use of asphyxiating, poisonous or other gases and biological methods of warfare; bullets which explode, expand or flatten easily in the human body, and certain explosive projectiles. The use of certain conventional weapons, such as non-detectable fragments, anti-personnel mines, booby traps and incendiary weapons, is prohibited.

6.3 The United Nations force is prohibited from employing or methods of warfare which may cause superfluous injury or unnecessary suffering, or which are intended, or may be expected to cause, widespread, long-term and severe damage to the natural environment.

6.4 The United Nations force is prohibited from using weapons or methods of combat of a nature to cause unnecessary suffering.

6.5 It is forbidden to order that there shall be no survivors.

6.6 The United Nations force is prohibited from attacking monuments of art, architecture or history, archaeological sites, works of art, places of worship and museums and libraries which constitute the cultural or spiritual heritage of peoples. In its area of operation, the United Nations force shall not use such cultural property or their immediate surroundings for purposes which might expose them to destruction or damage. Theft, pillage, misappropriation and any act of vandalism directed against cultural property is strictly prohibited.

6.7 The United Nations force is prohibited from attacking, destroying, removing or rendering useless objects indispensable to the survival of the civilian population, such as foodstuffs, crops, livestock and drinking-water installations and supplies.

6.8 The United Nations force shall not make installations containing dangerous forces, namely dams, dikes and nuclear electrical generating stations, the object of military operations if such operations may cause the release of dangerous forces and consequent severe losses among the civilian population.

6.9 The United Nations force shall not engage in reprisals against objects and installations protected under this section.

Section 7 Treatment of civilians and persons *hors de combat*

7.1 Persons not, or no longer, taking part in military operations, including civilians, members of armed forces who have laid down their weapons and persons placed *hors de combat* by reason of sickness, wounds or detention, shall, in all circumstances, be treated humanely and without any adverse distinction based on race, sex, religious convictions or any other ground. They shall be accorded full respect for their person, honour and religious and other convictions.

7.2 The following acts against any of the persons mentioned in section 7.1 are prohibited at any time and in any place: violence to life or physical integrity; murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment; collective punishment; reprisals; the taking of hostages; rape; enforced prostitution; any form of sexual assault and humiliation and degrading treatment; enslavement; and pillage.

7.3 Women shall be especially protected against any attack, in particular against rape, enforced prostitution or any other form of indecent assault.

7.4 Children shall be the object of special respect and shall be protected against any form of indecent assault.

Section 8 Treatment of detained persons

The United Nations force shall treat with humanity and respect for their dignity detained members of the armed forces and other persons who no longer take part in military operations by reason of detention. Without prejudice to their legal status, they shall be treated in accordance with the relevant provisions of the Third Geneva Convention of 1949, as may be applicable to them *mutatis mutandis*. In particular:

- (a) Their capture and detention shall be notified without delay to the party on which they depend and to the Central Tracing Agency of the International Committee of the Red Cross (ICRC), in particular in order to inform their families;
- (b) They shall be held in secure and safe premises which provide all possible safeguards of hygiene and health, and shall not be detained in areas exposed to the dangers of the combat zone;
- (c) They shall be entitled to receive food and clothing, hygiene and medical attention;
- (d) They shall under no circumstances be subjected to any form of torture or ill-treatment;
- (e) Women whose liberty has been restricted shall be held in quarters separated from men's quarters, and shall be under the immediate supervision of women;
- (f) In cases where children who have not attained the age of sixteen years take a direct part in hostilities and are arrested, detained or interned by the United Nations force, they shall continue to benefit from special protection. In particular, they shall be held in quarters separate from the quarters of adults, except when accommodated with their families;
- (g) ICRC's right to visit prisoners and detained persons shall be respected and guaranteed.

Section 9 Protection of the wounded, the sick, and medical and relief personnel

9.1 Members of the armed forces and other persons in the power of the United Nations force who are wounded or sick shall be respected and protected in all circumstances. They shall be treated humanely and receive the medical care and attention required by their condition, without adverse distinction. Only urgent medical reasons will authorize priority in the order of treatment to be administered.

9.2 Whenever circumstances permit, a suspension of fire shall be arranged, or other local arrangements made, to permit the search for and identification of the wounded, the sick and

the dead left on the battlefield and allow for their collection, removal, exchange and transport.

9.3 The United Nations force shall not attack medical establishments or mobile medical units. These shall at all times be respected and protected, unless they are used outside their humanitarian functions, to attack or otherwise commit harmful acts against the United Nations force.

9.4 The United Nations force shall in all circumstances respect and protect medical personnel exclusively engaged in the search for, transport or treatment of the wounded or sick, as well as religious personnel.

9.5 The United Nations force shall respect and protect transports of wounded and sick or medical equipment in the same way as mobile medical units.

9.6 The United Nations force shall not engage in reprisals against the wounded, the sick or the personnel, establishments and equipment protected under this section.

9.7 The United Nations force shall in all circumstances respect the Red Cross and Red Crescent emblems. These emblems may not be employed except to indicate or to protect medical units and medical establishments, personnel and material. Any misuse of the Red Cross or Red Crescent emblems is prohibited.

9.8 The United Nations force shall respect the right of the families to know about the fate of their sick, wounded and deceased relatives. To this end, the force shall facilitate the work of the ICRC Central Tracing Agency.

9.9 The United Nations force shall facilitate the work of relief operations which are humanitarian and impartial in character and conducted without any adverse distinction, and shall respect personnel, vehicles and premises involved in such operations.

Section 10 Entry into force

The present bulletin shall enter into force on 12 August 1999.

(Signed) Kofi A. Annan
Secretary-General

**List of Customary Rules of International Humanitarian Law,
International Committee of the Red Cross, 2005**

Annex. List of Customary Rules of International Humanitarian Law

This list is based on the conclusions set out in Volume I of the study on customary international humanitarian law. As the study did not seek to determine the customary nature of each treaty rule of international humanitarian law, it does not necessarily follow the structure of existing treaties. The scope of application of the rules is indicated in square brackets. The abbreviation IAC refers to customary rules applicable in international armed conflicts and the abbreviation NIAC to customary rules applicable in non-international armed conflicts. In the latter case, some rules are indicated as being “arguably” applicable because practice generally pointed in that direction but was less extensive.

The Principle of Distinction

Distinction between Civilians and Combatants

Rule 1. The parties to the conflict must at all times distinguish between civilians and combatants. Attacks may only be directed against combatants. Attacks must not be directed against civilians. [IAC/NIAC]

Rule 2. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited. [IAC/NIAC]

Rule 3. All members of the armed forces of a party to the conflict are combatants, except medical and religious personnel. [IAC]

Rule 4. The armed forces of a party to the conflict consist of all organized armed forces, groups and units which are under a command responsible to that party for the conduct of its subordinates. [IAC]

Rule 5. Civilians are persons who are not members of the armed forces. The civilian population comprises all persons who are civilians. [IAC/NIAC]

Rule 6. Civilians are protected against attack, unless and for such time as they take a direct part in hostilities. [IAC/NIAC]

Distinction between Civilian Objects and Military Objects

Rule 7. The parties to the conflict must at all times distinguish between civilian objects and military objects. Attacks may only be directed against military objects. Attacks must not be directed against civilian objects. [IAC/NIAC]

Rule 8. In so far as objects are concerned, military objects are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose partial or total destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage. [IAC/NIAC]

Rule 9. Civilian objects are all objects that are not military objects. [IAC/NIAC]

Rule 10. Civilian objects are protected against attack, unless and for such time as they are military objects. [IAC/NIAC]

Indiscriminate Attacks

Rule 11. Indiscriminate attacks are prohibited. [IAC/NIAC]

Rule 12. Indiscriminate attacks are those:

- (a) which are not directed at a specific military objective;
 - (b) which employ a method or means of combat which cannot be directed at a specific military objective; or
 - (c) which employ a method or means of combat the effects of which cannot be limited as required by international humanitarian law;
- and consequently, in each such case, are of a nature to strike military objectives and civilians or civilian objects without distinction. [IAC/NIAC]
- Rule 13.** Attacks by bombardment by any method or means which treats as a single military objective a number of clearly separated and distinct military objectives located in a city, town, village or other area containing a similar concentration of civilians or civilian objects are prohibited. [IAC/NIAC]

Proportionality in Attack

Rule 14. Launching an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated, is prohibited. [IAC/NIAC]

Precautions in Attack

Rule 15. In the conduct of military operations, constant care must be taken to spare the civilian population, civilians and civilian objects. All feasible precautions must be taken to avoid, and in any event to minimize, incidental loss of civilian life, injury to civilians and damage to civilian objects. [IAC/NIAC]

Rule 16. Each party to the conflict must do everything feasible to verify that targets are military objectives. [IAC/NIAC]

Rule 17. Each party to the conflict must take all feasible precautions in the choice of means and methods of warfare with a view to avoiding, and in any event to minimizing, incidental loss of civilian life, injury to civilians and damage to civilian objects. [IAC/NIAC]

Rule 18. Each party to the conflict must do everything feasible to assess whether the attack may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated. [IAC/NIAC]

Rule 19. Each party to the conflict must do everything feasible to cancel or suspend an attack if it becomes apparent that the target is not a military objective or that the attack may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated. [IAC/NIAC]

Rule 20. Each party to the conflict must give effective advance warning of attacks which may affect the civilian population, unless circumstances do not permit. [IAC/NIAC]

Rule 21. When a choice is possible between several military objectives for obtaining a similar military advantage, the objective to be selected must be that the attack on which may be expected to cause the least danger to civilian lives and to civilian objects. [IAC/arguably NIAC]

Precautions against the Effects of Attacks

Rule 22. The parties to the conflict must take all feasible precautions to protect the civilian population and civilian objects under their control against the effects of attacks. [IAC/NIAC]

Rule 23. Each party to the conflict must, to the extent feasible, avoid locating military objectives within or near densely populated areas. [IAC/arguably NIAC]

Rule 24. Each party to the conflict must, to the extent feasible, remove civilian persons and objects under its control from the vicinity of military objectives. [IAC/arguably NIAC]

Specifically Protected Persons and Objects

Medical and Religious Personnel and Objects

Rule 25. Medical personnel exclusively assigned to medical duties must be respected and protected in all circumstances. They lose their protection if they commit, outside their humanitarian function, acts harmful to the enemy. [IAC/NIAC]

Rule 26. Punishing a person for performing medical duties compatible with medical ethics or compelling a person engaged in medical activities to perform acts contrary to medical ethics is prohibited. [IAC/NIAC]

Rule 27. Religious personnel exclusively assigned to religious duties must be respected and protected in all circumstances. They lose their protection if they commit, outside their humanitarian function, acts harmful to the enemy. [IAC/NIAC]

Rule 28. Medical units exclusively assigned to medical purposes must be respected and protected in all circumstances. They lose their protection if they are being used, outside their humanitarian function, to commit acts harmful to the enemy. [IAC/NIAC]

Rule 29. Medical transports assigned exclusively to medical transportation must be respected and protected in all circumstances. They lose their protection if they are being used, outside their humanitarian function, to commit acts harmful to the enemy. [IAC/NIAC]

Rule 30. Attacks directed against medical and religious personnel and objects displaying the distinctive emblems of the Geneva Conventions in conformity with international law are prohibited. [IAC/NIAC]

Humanitarian Relief Personnel and Objects

Rule 31. Humanitarian relief personnel must be respected and protected. [IAC/NIAC]

Rule 32. Objects used for humanitarian relief operations must be respected and protected. [IAC/NIAC]

Personnel and Objects Involved in a Peacekeeping Mission

Rule 33. Directing an attack against personnel and objects involved in a peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians and civilian objects under international humanitarian law, is prohibited. [IAC/NIAC]

Journalists

Rule 34. Civilian journalists engaged in professional missions in areas of armed conflict must be respected and protected as long as they are not taking a direct part in hostilities. [IAC/NIAC]

Protected Zones

Rule 35. Directing an attack against a zone established to shelter the wounded, the sick and civilians from the effects of hostilities is prohibited. [IAC/NIAC]

Rule 36. Directing an attack against a demilitarized zone agreed upon between the parties to the conflict is prohibited. [IAC/NIAC]

Rule 37. Directing an attack against a non-defended locality is prohibited. [IAC/NIAC]

Cultural Property

Rule 38. Each party to the conflict must respect cultural property:

A. Special care must be taken in military operations to avoid damage to buildings dedicated to religion, art, science, education or charitable purposes and historic monuments unless they are military objectives.

B. Property of great importance to the cultural heritage of every people must not be the object of attack unless imperatively required by military necessity. [IAC/NIAC]

Rule 39. The use of property of great importance to the cultural heritage of every people for purposes which are likely to expose it to destruction or damage is prohibited, unless imperatively required by military necessity. [IAC/NIAC]

Rule 40. Each party to the conflict must protect cultural property:

- A. All seizure of or destruction or wilful damage done to institutions dedicated to religion, charity, education, the arts and sciences, historic monuments and works of art and science is prohibited.
- B. Any form of theft, pillage or misappropriation of, and any acts of vandalism directed against, property of great importance to the cultural heritage of every people is prohibited.

[IAC/NIAC]

Rule 41. The occupying power must prevent the illicit export of cultural property from occupied territory and must return illicitly exported property to the competent authorities of the occupied territory. [IAC]

Works and Installations Containing Dangerous Forces

Rule 42. Particular care must be taken if works and installations containing dangerous forces, namely dams, dykes and nuclear electrical generating stations, and other installations located at or in their vicinity are attacked, in order to avoid the release of dangerous forces and consequent severe losses among the civilian population. [IAC/NIAC]

The Natural Environment

Rule 43. The general principles on the conduct of hostilities apply to the natural environment:

- A. No part of the natural environment may be attacked, unless it is a military objective.
- B. Destruction of any part of the natural environment is prohibited, unless required by imperative military necessity.
- C. Launching an attack against a military objective which may be expected to cause incidental damage to the environment which would be excessive in relation to the concrete and direct military advantage anticipated is prohibited.

[IAC/NIAC]

Rule 44. Methods and means of warfare must be employed with due regard to the protection and preservation of the natural environment. In the conduct of military operations, all feasible precautions must be taken to avoid, and in any event to minimize, incidental damage to the environment. Lack of scientific certainty as to the effects on the environment of certain military operations does not absolve a party to the conflict from taking such precautions. [IAC/arguably NIAC]

Rule 45. The use of methods or means of warfare that are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment is prohibited. Destruction of the natural environment may not be used as a weapon. [IAC/arguably NIAC]

Specific Methods of Warfare

Denial of Quarter

Rule 46. Ordering that no quarter will be given, threatening an adversary there-with or conducting hostilities on this basis is prohibited. [IAC/NIAC]

Rule 47. Attacking persons who are recognized as *hors de combat* is prohibited. A person *hors de combat* is:

- (a) anyone who is in the power of an adverse party;
- (b) anyone who is defenceless because of unconsciousness, shipwreck, wounds or sickness; or
- (c) anyone who clearly expresses an intention to surrender; provided he or she abstains from any hostile act and does not attempt to escape. [IAC/NIAC]

Rule 48. Making persons parachuting from an aircraft in distress the object of attack during their descent is prohibited. [IAC/NIAC]

Destruction and Seizure of Property

Rule 49. The parties to the conflict may seize military equipment belonging to an adverse party as war booty. [IAC]

Rule 50. The destruction or seizure of the property of an adversary is prohibited, unless required by imperative military necessity. [IAC/NIAC]

Rule 51. In occupied territory:

- (a) movable public property that can be used for military operations may be confiscated;
- (b) immovable public property must be administered according to the rule of usufruct; and
- (c) private property must be respected and may not be confiscated; except where destruction or seizure of such property is required by imperative military necessity. [IAC]

Rule 52. Pillage is prohibited. [IAC/NIAC]

Starvation and Access to Humanitarian Relief

Rule 53. The use of starvation of the civilian population as a method of warfare is prohibited. [IAC/NIAC]

Rule 54. Attacking, destroying, removing or rendering useless objects indispensable to the survival of the civilian population is prohibited. [IAC/NIAC]

Rule 55. The parties to the conflict must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need, which is impartial in character and conducted without any adverse distinction, subject to their right of control. [IAC/NIAC]

Rule 56. The parties to the conflict must ensure the freedom of movement of authorized humanitarian relief personnel essential to the exercise of their

functions. Only in case of imperative military necessity may their movements be temporarily restricted. [IAC/NIAC]

Deception

Rule 57. Ruses of war are not prohibited as long as they do not infringe a rule of international humanitarian law. [IAC/NIAC]

Rule 58. The improper use of the white flag of truce is prohibited. [IAC/NIAC]

Rule 59. The improper use of the distinctive emblems of the Geneva Conventions is prohibited. [IAC/NIAC]

Rule 60. The use of the United Nations emblem and uniform is prohibited, except as authorized by the organization. [IAC/NIAC]

Rule 61. The improper use of other internationally recognized emblems is prohibited. [IAC/NIAC]

Rule 62. Improper use of the flags or military emblems, insignia or uniforms of the adversary is prohibited. [IAC/arguably NIAC]

Rule 63. Use of the flags or military emblems, insignia or uniforms of neutral or other States not party to the conflict is prohibited. [IAC/arguably NIAC]

Rule 64. Concluding an agreement to suspend combat with the intention of attacking by surprise the enemy relying on that agreement is prohibited. [IAC/NIAC]

Rule 65. Killing, injuring or capturing an adversary by resort to perfidy is prohibited. [IAC/NIAC]

Communication with the Enemy

Rule 66. Commanders may enter into non-hostile contact through any means of communication. Such contact must be based on good faith. [IAC/NIAC]

Rule 67. *Parlementaires* are inviolable. [IAC/NIAC]

Rule 68. Commanders may take the necessary precautions to prevent the presence of a *parlementaire* from being prejudicial. [IAC/NIAC]

Rule 69. *Parlementaires* taking advantage of their privileged position to commit an act contrary to international law and detrimental to the adversary lose their inviolability. [IAC/NIAC]

Weapons

General Principles on the Use of Weapons

Rule 70. The use of means and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering is prohibited. [IAC/NIAC]

Rule 71. The use of weapons which are by nature indiscriminate is prohibited. [IAC/NIAC]

Poison

Rule 72. The use of poison or poisoned weapons is prohibited. [IAC/NIAC]

Biological Weapons

Rule 73. The use of biological weapons is prohibited. [IAC/NIAC]

Chemical Weapons

Rule 74. The use of chemical weapons is prohibited. [IAC/NIAC]

Rule 75. The use of riot-control agents as a method of warfare is prohibited. [IAC/NIAC]

Rule 76. The use of herbicides as a method of warfare is prohibited if they:

- (a) are of a nature to be prohibited chemical weapons;
- (b) are of a nature to be prohibited biological weapons;
- (c) are aimed at vegetation that is not a military objective;
- (d) would cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which may be expected to be excessive in relation to the concrete and direct military advantage anticipated; or
- (e) would cause widespread, long-term and severe damage to the natural environment.

[IAC/NIAC]

Expanding Bullets

Rule 77. The use of bullets which expand or flatten easily in the human body is prohibited. [IAC/NIAC]

Exploding Bullets

Rule 78. The anti-personnel use of bullets which explode within the human body is prohibited. [IAC/NIAC]

Weapons Primarily Injuring by Non-detectable Fragments

Rule 79. The use of weapons the primary effect of which is to injure by fragments which are not detectable by X-rays in the human body is prohibited. [IAC/NIAC]

Booby-traps

Rule 80. The use of booby-traps which are in any way attached to or associated with objects or persons entitled to special protection under international humanitarian law or with objects that are likely to attract civilians is prohibited. [IAC/NIAC]

Landmines

Rule 81. When landmines are used, particular care must be taken to minimize their indiscriminate effects. [IAC/NIAC]

Rule 82. A party to the conflict using landmines must record their placement, as far as possible. [IAC/arguably NIAC]

Rule 83. At the end of active hostilities, a party to the conflict which has used landmines must remove or otherwise render them harmless to civilians, or facilitate their removal. [IAC/NIAC]

Incendiary Weapons

Rule 84. If incendiary weapons are used, particular care must be taken to avoid, and in any event to minimize, incidental loss of civilian life, injury to civilians and damage to civilian objects. [IAC/NIAC]

Rule 85. The anti-personnel use of incendiary weapons is prohibited, unless it is not feasible to use a less harmful weapon to render a person *hors de combat*. [IAC/NIAC]

Blinding Laser Weapons

Rule 86. The use of laser weapons that are specifically designed, as their sole combat function or as one of their combat functions, to cause permanent blindness to unenhanced vision is prohibited. [IAC/NIAC]

Treatment of Civilians and Persons Hors de Combat

Fundamental Guarantees

Rule 87. Civilians and persons *hors de combat* must be treated humanely. [IAC/NIAC]

Rule 88. Adverse distinction in the application of international humanitarian law based on race, colour, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or on any other similar criteria is prohibited. [IAC/NIAC]

Rule 89. Murder is prohibited. [IAC/NIAC]

Rule 90. Torture, cruel or inhuman treatment and outrages upon personal dignity, in particular humiliating and degrading treatment, are prohibited. [IAC/NIAC]

Rule 91. Corporal punishment is prohibited. [IAC/NIAC]

Rule 92. Mutilation, medical or scientific experiments or any other medical procedure not indicated by the state of health of the person concerned and not consistent with generally accepted medical standards are prohibited. [IAC/NIAC]

Rule 93. Rape and other forms of sexual violence are prohibited. [IAC/NIAC]

Rule 94. Slavery and the slave trade in all their forms are prohibited. [IAC/NIAC]

Rule 95. Uncompensated or abusive forced labour is prohibited. [IAC/NIAC]

Rule 96. The taking of hostages is prohibited. [IAC/NIAC]

Rule 97. The use of human shields is prohibited. [IAC/NIAC]

Rule 98. Enforced disappearance is prohibited. [IAC/NIAC]

Rule 99. Arbitrary deprivation of liberty is prohibited. [IAC/NIAC]

Rule 100. No one may be convicted or sentenced, except pursuant to a fair trial affording all essential judicial guarantees. [IAC/NIAC]

Rule 101. No one may be accused or convicted of a criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time it was committed; nor may a heavier penalty be imposed than that which was applicable at the time the criminal offence was committed. [IAC/NIAC]

Rule 102. No one may be convicted of an offence except on the basis of individual criminal responsibility. [IAC/NIAC]

Rule 103. Collective punishments are prohibited. [IAC/NIAC]

Rule 104. The convictions and religious practices of civilians and persons *hors de combat* must be respected. [IAC/NIAC]

Rule 105. Family life must be respected as far as possible. [IAC/NIAC]

Combatants and Prisoner-of-War Status

Rule 106. Combatants must distinguish themselves from the civilian population while they are engaged in an attack or in a military operation preparatory to an attack. If they fail to do so, they do not have the right to prisoner-of-war status. [IAC]

Rule 107. Combatants who are captured while engaged in espionage do not have the right to prisoner-of-war status. They may not be convicted or sentenced without previous trial. [IAC]

Rule 108. Mercenaries, as defined in Additional Protocol I, do not have the right to combatant or prisoner-of-war status. They may not be convicted or sentenced without previous trial. [IAC]

The Wounded, Sick and Shipwrecked

Rule 109. Whenever circumstances permit, and particularly after an engagement, each party to the conflict must, without delay, take all possible measures to search for, collect and evacuate the wounded, sick and shipwrecked without adverse distinction. [IAC/NIAC]

Rule 110. The wounded, sick and shipwrecked must receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition. No distinction may be made among them founded on any grounds other than medical ones. [IAC/NIAC]

Rule 111. Each party to the conflict must take all possible measures to protect the wounded, sick and shipwrecked against ill-treatment and against pillage of their personal property. [IAC/NIAC]

The Dead

Rule 112. Whenever circumstances permit, and particularly after an engagement, each party to the conflict must, without delay, take all possible measures to search for, collect and evacuate the dead without adverse distinction. [IAC/NIAC]

Rule 113. Each party to the conflict must take all possible measures to prevent the dead from being despoiled. Mutilation of dead bodies is prohibited. [IAC/NIAC]

Rule 114. Parties to the conflict must endeavour to facilitate the return of the remains of the deceased upon request of the party to which they belong or upon the request of their next of kin. They must return their personal effects to them. [IAC]

Rule 115. The dead must be disposed of in a respectful manner and their graves respected and properly maintained. [IAC/NIAC]

Rule 116. With a view to the identification of the dead, each party to the conflict must record all available information prior to disposal and mark the location of the graves. [IAC/NIAC]

Missing Persons

Rule 117. Each party to the conflict must take all feasible measures to account for persons reported missing as a result of armed conflict and must provide their family members with any information it has on their fate. [IAC/NIAC]

Persons Deprived of Their Liberty

Rule 118. Persons deprived of their liberty must be provided with adequate food, water, clothing, shelter and medical attention. [IAC/NIAC]

Rule 119. Women who are deprived of their liberty must be held in quarters separate from those of men, except where families are accommodated as family units, and must be under the immediate supervision of women. [IAC/NIAC]

Rule 120. Children who are deprived of their liberty must be held in quarters separate from those of adults, except where families are accommodated as family units. [IAC/NIAC]

Rule 121. Persons deprived of their liberty must be held in premises which are removed from the combat zone and which safeguard their health and hygiene. [IAC/NIAC]

Rule 122. Pillage of the personal belongings of persons deprived of their liberty is prohibited. [IAC/NIAC]

Rule 123. The personal details of persons deprived of their liberty must be recorded. [IAC/NIAC]

Rule 124.
A. In international armed conflicts, the ICRC must be granted regular access to all persons deprived of their liberty in order to verify the

conditions of their detention and to restore contacts between those persons and their families. [IAC]

B. In non-international armed conflicts, the ICRC may offer its services to the parties to the conflict with a view to visiting all persons deprived of their liberty for reasons related to the conflict in order to verify the conditions of their detention and to restore contacts between those persons and their families. [NIAC]

Rule 125. Persons deprived of their liberty must be allowed to correspond with their families, subject to reasonable conditions relating to frequency and the need for censorship by the authorities. [IAC/NIAC]

Rule 126. Civilian internees and persons deprived of their liberty in connection with a non-international armed conflict must be allowed to receive visitors, especially near relatives, to the degree practicable. [IAC/NIAC]

Rule 127. The personal convictions and religious practices of persons deprived of their liberty must be respected. [IAC/NIAC]

Rule 128.
A. Prisoners of war must be released and repatriated without delay after the cessation of active hostilities. [IAC]

B. Civilian internees must be released as soon as the reasons which necessitated internment no longer exist, but at the latest as soon as possible after the close of active hostilities. [IAC]

C. Persons deprived of their liberty in relation to a non-international armed conflict must be released as soon as the reasons for the deprivation of their liberty cease to exist. [NIAC]

The persons referred to may continue to be deprived of their liberty if penal proceedings are pending against them or if they are serving a sentence lawfully imposed.

Displacement and Displaced Persons

Rule 129.

A. Parties to an international armed conflict may not deport or forcibly transfer the civilian population of an occupied territory, in whole or in part, unless the security of the civilians involved or imperative military reasons so demand. [IAC]

B. Parties to a non-international armed conflict may not order the displacement of the civilian population, in whole or in part, for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand. [NIAC]

Rule 130. States may not deport or transfer parts of their own civilian population into a territory they occupy. [IAC]

Rule 131. In case of displacement, all possible measures must be taken in order that the civilians concerned are received under satisfactory conditions of shelter, hygiene, health, safety and nutrition and that members of the same family are not separated. [IAC/NIAC]

Rule 132. Displaced persons have a right to voluntary return in safety to their homes or places of habitual residence as soon as the reasons for their displacement cease to exist. [IAC/NIAC]

Rule 133. The property rights of displaced persons must be respected. [IAC/NIAC]

Other Persons Afforded Specific Protection

Rule 134. The specific protection, health and assistance needs of women affected by armed conflict must be respected. [IAC/NIAC]

Rule 135. Children affected by armed conflict are entitled to special respect and protection. [IAC/NIAC]

Rule 136. Children must not be recruited into armed forces or armed groups. [IAC/NIAC]

Rule 137. Children must not be allowed to take part in hostilities. [IAC/NIAC]

Rule 138. The elderly, disabled and infirm affected by armed conflict are entitled to special respect and protection. [IAC/NIAC]

Implementation

Compliance with International Humanitarian Law

Rule 139. Each party to the conflict must respect and ensure respect for international humanitarian law by its armed forces and other persons or groups acting in fact on its instructions, or under its direction or control. [IAC/NIAC]

Rule 140. The obligation to respect and ensure respect for international humanitarian law does not depend on reciprocity. [IAC/NIAC]

Rule 141. Each State must make legal advisers available, when necessary, to advise military commanders at the appropriate level on the application of international humanitarian law. [IAC/NIAC]

Rule 142. States and parties to the conflict must provide instruction in international humanitarian law to their armed forces. [IAC/NIAC]

Rule 143. States must encourage the teaching of international humanitarian law to the civilian population. [IAC/NIAC]

Enforcement of International Humanitarian Law

Rule 144. States may not encourage violations of international humanitarian law by parties to an armed conflict. They must exert their influence, to the degree possible, to stop violations of international humanitarian law. [IAC/NIAC]

Rule 145. Where not prohibited by international law, belligerent reprisals are subject to stringent conditions. [IAC]

Rule 146. Belligerent reprisals against persons protected by the Geneva Conventions are prohibited. [IAC]

Rule 147. Reprisals against objects protected under the Geneva Conventions and Hague Convention for the Protection of Cultural Property are prohibited. [IAC]

Rule 148. Parties to non-international armed conflicts do not have the right to resort to belligerent reprisals. Other countermeasures against persons who do not or who have ceased to take a direct part in hostilities are prohibited. [NIAC]

Responsibility and Reparation

Rule 149. A State is responsible for violations of international humanitarian law attributable to it, including:

- (a) violations committed by its organs, including its armed forces;
- (b) violations committed by persons or entities it empowered to exercise elements of governmental authority;
- (c) violations committed by persons or groups acting in fact on its instructions, or under its direction or control; and
- (d) violations committed by private persons or groups which it acknowledges and adopts as its own conduct. [IAC/NIAC]

Rule 150. A State responsible for violations of international humanitarian law is required to make full reparation for the loss or injury caused. [IAC/NIAC]

Individual Responsibility

Rule 151. Individuals are criminally responsible for war crimes they commit. [IAC/NIAC]

Rule 152. Commanders and other superiors are criminally responsible for war crimes committed pursuant to their orders. [IAC/NIAC]

Rule 153. Commanders and other superiors are criminally responsible for war crimes committed by their subordinates if they knew, or had reason to know, that the subordinates were about to commit or were committing such crimes and did not take all necessary and reasonable measures in their power to prevent their commission, or if such crimes had been committed, to punish the persons responsible. [IAC/NIAC]

Rule 154. Every combatant has a duty to disobey a manifestly unlawful order. [IAC/NIAC]

Rule 155. Obeying a superior order does not relieve a subordinate of criminal responsibility if the subordinate knew that the act ordered was unlawful or should have known because of the manifestly unlawful nature of the act ordered. [IAC/NIAC]

War Crimes

Rule 156. Serious violations of international humanitarian law constitute war crimes. [IAC/NIAC]

Rule 157. States have the right to vest universal jurisdiction in their national courts over war crimes. [IAC/NIAC]

Rule 158. States must investigate war crimes allegedly committed by their nationals or armed forces, or on their territory, and, if appropriate, prosecute the suspects. They must also investigate other war crimes over which they have jurisdiction and, if appropriate, prosecute the suspects. [IAC/NIAC]

Rule 159. At the end of hostilities, the authorities in power must endeavour to grant the broadest possible amnesty to persons who have participated in a non-international armed conflict, or those deprived of their liberty for reasons related to the armed conflict, with the exception of persons suspected of, accused of or sentenced for war crimes. [NIAC]

Rule 160. Statutes of limitation may not apply to war crimes. [IAC/NIAC]

Rule 161. States must make every effort to cooperate, to the extent possible, with each other in order to facilitate the investigation of war crimes and the prosecution of the suspects. [IAC/NIAC]

Convention on Cluster Munitions, 2008



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CONVENTION ON CLUSTER MUNITIONS

The States Parties to this Convention,

Deeply concerned that civilian populations and individual civilians continue to bear the brunt of armed conflict,

Determined to put an end for all time to the suffering and casualties caused by cluster munitions at the time of their use, when they fail to function as intended or when they are abandoned,

Concerned that cluster munition remnants kill or maim civilians, including women and children, obstruct economic and social development, including through the loss of livelihood, impede post-conflict rehabilitation and reconstruction, delay or prevent the return of refugees and internally displaced persons, can negatively impact on national and international peace-building and humanitarian assistance efforts, and have other severe consequences that can persist for many years after use,

Deeply concerned also at the dangers presented by the large national stockpiles of cluster munitions retained for operational use and *determined* to ensure their rapid destruction,

Believing it necessary to contribute effectively in an efficient, coordinated manner to resolving the challenge of removing cluster munition remnants located throughout the world, and to ensure their destruction,

Determined also to ensure the full realization of the rights of all cluster munition victims and *recognizing* their inherent dignity,

Resolved to do their utmost in providing assistance to cluster munition victims, including medical care, rehabilitation and psychological support, as well as providing for their social and economic inclusion,

Recognizing the need to provide age- and gender-sensitive assistance to cluster munition victims and to address the special needs of vulnerable groups,

Bearing in mind the Convention on the Rights of Persons with Disabilities which, *inter alia*, requires that States Parties to that Convention undertake to ensure and promote the full realization of all human rights and fundamental freedoms of all persons with disabilities without discrimination of any kind on the basis of disability,

Mindful of the need to coordinate adequately efforts undertaken in various fora to address the rights and needs of victims of various types of weapons, and resolved to avoid discrimination among victims of various types of weapons,

Reaffirming that in cases not covered by this Convention or by other international agreements, civilians and combatants remain under the protection and authority of the principles of international law, derived from established custom, from the principles of humanity and from the dictates of public conscience,

Resolved also that armed groups distinct from the armed forces of a State shall not, under any circumstances, be permitted to engage in any activity prohibited to a State Party to this Convention,

Welcoming the very broad international support for the international norm prohibiting anti-personnel mines, enshrined in the 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction,

Welcoming also the adoption of the Protocol on Explosive Remnants of War, annexed to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects, and its entry into force on 12 November 2006, and wishing to enhance the protection of civilians from the effects of cluster munition remnants in post-conflict environments,

Bearing in mind also United Nations Security Council Resolution 1325 on women, peace and security and United Nations Security Council Resolution 1612 on children in armed conflict,

Welcoming further the steps taken nationally, regionally and globally in recent years aimed at prohibiting, restricting or suspending the use, stockpiling, production and transfer of cluster munitions,

Stressing the role of public conscience in furthering the principles of humanity as evidenced by the global call for an end to civilian suffering caused by cluster munitions and recognizing the efforts to that end undertaken by the United Nations, the International Committee of the Red Cross, the Cluster Munition Coalition and numerous other non-governmental organizations around the world,

Reaffirming the Declaration of the Oslo Conference on Cluster Munitions, by which, inter alia, States recognized the grave consequences

caused by the use of cluster munitions and committed themselves to conclude by 2008 a legally binding instrument that would prohibit the use, production, transfer and stockpiling of cluster munitions that cause unacceptable harm to civilians, and would establish a framework for cooperation and assistance that ensures adequate provision of care and rehabilitation for victims, clearance of contaminated areas, risk reduction education and destruction of stockpiles,

Emphasizing the desirability of attracting the adherence of all States to this Convention, and determined to work strenuously towards the promotion of its universalization and its full implementation,

Basing themselves on the principles and rules of international humanitarian law, in particular the principle that the right of parties to an armed conflict to choose methods or means of warfare is not unlimited, and the rules that the parties to a conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly direct their operations against military objectives only, that in the conduct of military operations constant care shall be taken to spare the civilian population, civilians and civilian objects and that the civilian population and individual civilians enjoy general protection against dangers arising from military operations,

HAVE AGREED as follows:

Article 1

General obligations and scope of application

1. Each State Party undertakes never under any circumstances to:
 - (a) Use cluster munitions;
 - (b) Develop, produce, otherwise acquire, stockpile, retain or transfer to anyone, directly or indirectly, cluster munitions;
 - (c) Assist, encourage or induce anyone to engage in any activity prohibited to a State Party under this Convention.
2. Paragraph 1 of this Article applies, mutatis mutandis, to explosive bomblets that are specifically designed to be dispersed or released from dispensers affixed to aircraft.
3. This Convention does not apply to mines.

Article 2
Definitions

For the purposes of this Convention:

1. "Cluster munition victims" means all persons who have been killed or suffered physical or psychological injury, economic loss, social marginalization or substantial impairment of the realization of their rights caused by the use of cluster munitions. They include those persons directly impacted by cluster munitions as well as their affected families and communities;
2. "Cluster munition" means a conventional munition that is designed to disperse or release explosive submunitions each weighing less than 20 kilograms, and includes those explosive submunitions. It does not mean the following:
 - (a) A munition or submunition designed to dispense flares, smoke, pyrotechnics or chaff; or a munition designed exclusively for an air defence role;
 - (b) A munition or submunition designed to produce electrical or electronic effects;
 - (c) A munition that, in order to avoid indiscriminate area effects and the risks posed by unexploded submunitions, has all of the following characteristics:
 - (i) Each munition contains fewer than ten explosive submunitions;
 - (ii) Each explosive submunition weighs more than four kilograms;
 - (iii) Each explosive submunition is designed to detect and engage a single target object;
 - (iv) Each explosive submunition is equipped with an electronic self-destruction mechanism;
 - (v) Each explosive submunition is equipped with an electronic self-deactivating feature;

3. "Explosive submunition" means a conventional munition that in order to perform its task is dispersed or released by a cluster munition and is designed to function by detonating an explosive charge prior to, on or after impact;
4. "Failed cluster munition" means a cluster munition that has been fired, dropped, launched, projected or otherwise delivered and which should have dispersed or released its explosive submunitions but failed to do so;
5. "Unexploded submunition" means an explosive submunition that has been dispersed or released by, or otherwise separated from, a cluster munition and has failed to explode as intended;
6. "Abandoned cluster munitions" means cluster munitions or explosive submunitions that have not been used and that have been left behind or dumped, and that are no longer under the control of the party that left them behind or dumped them. They may or may not have been prepared for use;
7. "Cluster munition remnants" means failed cluster munitions, abandoned cluster munitions, unexploded submunitions and unexploded bomblets;
8. "Transfer" involves, in addition to the physical movement of cluster munitions into or from national territory, the transfer of title to and control over cluster munitions, but does not involve the transfer of territory containing cluster munition remnants;
9. "Self-destruction mechanism" means an incorporated automatically-functioning mechanism which is in addition to the primary initiating mechanism of the munition and which secures the destruction of the munition into which it is incorporated;
10. "Self-deactivating" means automatically rendering a munition inoperable by means of the irreversible exhaustion of a component, for example a battery, that is essential to the operation of the munition;
11. "Cluster munition contaminated area" means an area known or suspected to contain cluster munition remnants;
12. "Mine" means a munition designed to be placed under, on or near the ground or other surface area and to be exploded by the presence, proximity or contact of a person or a vehicle;

13. "Explosive bomblet" means a conventional munition, weighing less than 20 kilograms, which is not self-propelled and which, in order to perform its task, is dispersed or released by a dispenser, and is designed to function by detonating an explosive charge prior to, on or after impact;

14. "Dispenser" means a container that is designed to disperse or release explosive bomblets and which is affixed to an aircraft at the time of dispersal or release;

15. "Unexploded bomblet" means an explosive bomblet that has been dispersed, released or otherwise separated from a dispenser and has failed to explode as intended.

Article 3
Storage and stockpile destruction

1. Each State Party shall, in accordance with national regulations, separate all cluster munitions under its jurisdiction and control from munitions retained for operational use and mark them for the purpose of destruction.

2. Each State Party undertakes to destroy or ensure the destruction of all cluster munitions referred to in paragraph 1 of this Article as soon as possible but not later than eight years after the entry into force of this Convention for that State Party. Each State Party undertakes to ensure that destruction methods comply with applicable international standards for protecting public health and the environment.

3. If a State Party believes that it will be unable to destroy or ensure the destruction of all cluster munitions referred to in paragraph 1 of this Article within eight years of entry into force of this Convention for that State Party it may submit a request to a Meeting of States Parties or a Review Conference for an extension of the deadline for completing the destruction of such cluster munitions by a period of up to four years. A State Party may, in exceptional circumstances, request additional extensions of up to four years. The requested extensions shall not exceed the number of years strictly necessary for that State Party to complete its obligations under paragraph 2 of this Article.

4. Each request for an extension shall set out:

(a) The duration of the proposed extension;

(b) A detailed explanation of the proposed extension, including the financial and technical means available to or required by the State Party for the

destruction of all cluster munitions referred to in paragraph 1 of this Article and, where applicable, the exceptional circumstances justifying it;

(c) A plan for how and when stockpile destruction will be completed;

(d) The quantity and type of cluster munitions and explosive submunitions held at the entry into force of this Convention for that State Party and any additional cluster munitions or explosive submunitions discovered after such entry into force;

(e) The quantity and type of cluster munitions and explosive submunitions destroyed during the period referred to in paragraph 2 of this Article; and

(f) The quantity and type of cluster munitions and explosive submunitions remaining to be destroyed during the proposed extension and the annual destruction rate expected to be achieved.

5. The Meeting of States Parties or the Review Conference shall, taking into consideration the factors referred to in paragraph 4 of this Article, assess the request and decide by a majority of votes of States Parties present and voting whether to grant the request for an extension. The States Parties may decide to grant a shorter extension than that requested and may propose benchmarks for the extension, as appropriate. A request for an extension shall be submitted a minimum of nine months prior to the Meeting of States Parties or the Review Conference at which it is to be considered.

6. Notwithstanding the provisions of Article 1 of this Convention, the retention or acquisition of a limited number of cluster munitions and explosive submunitions for the development of and training in cluster munition and explosive submunition detection, clearance or destruction techniques, or for the development of cluster munition counter-measures, is permitted. The amount of explosive submunitions retained or acquired shall not exceed the minimum number absolutely necessary for these purposes.

7. Notwithstanding the provisions of Article 1 of this Convention, the transfer of cluster munitions to another State Party for the purpose of destruction, as well as for the purposes described in paragraph 6 of this Article, is permitted.

8. States Parties retaining, acquiring or transferring cluster munitions or explosive submunitions for the purposes described in paragraphs 6 and 7 of this Article shall submit a detailed report on the planned and actual use of these cluster munitions and explosive submunitions and their type, quantity

and lot numbers. If cluster munitions or explosive submunitions are transferred to another State Party for these purposes, the report shall include reference to the receiving party. Such a report shall be prepared for each year during which a State Party retained, acquired or transferred cluster munitions or explosive submunitions and shall be submitted to the Secretary-General of the United Nations no later than 30 April of the following year.

Article 4
*Clearance and destruction of cluster munition remnants and
risk reduction education*

1. Each State Party undertakes to clear and destroy, or ensure the clearance and destruction of, cluster munition remnants located in cluster munition contaminated areas under its jurisdiction or control, as follows:

(a) Where cluster munition remnants are located in areas under its jurisdiction or control at the date of entry into force of this Convention for that State Party, such clearance and destruction shall be completed as soon as possible but not later than ten years from that date;

(b) Where, after entry into force of this Convention for that State Party, cluster munitions have become cluster munition remnants located in areas under its jurisdiction or control, such clearance and destruction must be completed as soon as possible but not later than ten years after the end of the active hostilities during which such cluster munitions became cluster munition remnants; and

(c) Upon fulfilling either of its obligations set out in subparagraphs (a) and (b) of this paragraph, that State Party shall make a declaration of compliance to the next Meeting of States Parties.

2. In fulfilling its obligations under paragraph 1 of this Article, each State Party shall take the following measures as soon as possible, taking into consideration the provisions of Article 6 of this Convention regarding international cooperation and assistance:

(a) Survey, assess and record the threat posed by cluster munition remnants, making every effort to identify all cluster munition contaminated areas under its jurisdiction or control;

(b) Assess and prioritize needs in terms of marking, protection of civilians, clearance and destruction, and take steps to mobilize resources and develop a national plan to carry out these activities, building, where appropriate, upon existing structures, experiences and methodologies;

(c) Take all feasible steps to ensure that all cluster munition contaminated areas under its jurisdiction or control are perimeter-marked, monitored and protected by fencing or other means to ensure the effective exclusion of civilians. Warning signs based on methods of marking readily recognizable by the affected community should be utilized in the marking of suspected hazardous areas. Signs and other hazardous area boundary markers should, as far as possible, be visible, legible, durable and resistant to environmental effects and should clearly identify which side of the marked boundary is considered to be within the cluster munition contaminated areas and which side is considered to be safe;

(d) Clear and destroy all cluster munition remnants located in areas under its jurisdiction or control; and

(e) Conduct risk reduction education to ensure awareness among civilians living in or around cluster munition contaminated areas of the risks posed by such remnants.

3. In conducting the activities referred to in paragraph 2 of this Article, each State Party shall take into account international standards, including the International Mine Action Standards (IMAS).

4. This paragraph shall apply in cases in which cluster munitions have been used or abandoned by one State Party prior to entry into force of this Convention for that State Party and have become cluster munition remnants that are located in areas under the jurisdiction or control of another State Party at the time of entry into force of this Convention for the latter.

(a) In such cases, upon entry into force of this Convention for both States Parties, the former State Party is strongly encouraged to provide, inter alia, technical, financial, material or human resources assistance to the latter State Party, either bilaterally or through a mutually agreed third party, including through the United Nations system or other relevant organizations, to facilitate the marking, clearance and destruction of such cluster munition remnants.

(b) Such assistance shall include, where available, information on types and quantities of the cluster munitions used, precise locations of cluster munition strikes and areas in which cluster munition remnants are known to be located.

5. If a State Party believes that it will be unable to clear and destroy or ensure the clearance and destruction of all cluster munition remnants referred to in paragraph 1 of this Article within ten years of the entry into force of this

Convention for that State Party, it may submit a request to a Meeting of States Parties or a Review Conference for an extension of the deadline for completing the clearance and destruction of such cluster munition remnants by a period of up to five years. The requested extension shall not exceed the number of years strictly necessary for that State Party to complete its obligations under paragraph 1 of this Article.

6. A request for an extension shall be submitted to a Meeting of States Parties or a Review Conference prior to the expiry of the time period referred to in paragraph 1 of this Article for that State Party. Each request shall be submitted a minimum of nine months prior to the Meeting of States Parties or Review Conference at which it is to be considered. Each request shall set out:

- (a) The duration of the proposed extension;
- (b) A detailed explanation of the reasons for the proposed extension, including the financial and technical means available to and required by the State Party for the clearance and destruction of all cluster munition remnants during the proposed extension;
- (c) The preparation of future work and the status of work already conducted under national clearance and demining programmes during the initial ten year period referred to in paragraph 1 of this Article and any subsequent extensions;
- (d) The total area containing cluster munition remnants at the time of entry into force of this Convention for that State Party and any additional areas containing cluster munition remnants discovered after such entry into force;
- (e) The total area containing cluster munition remnants cleared since entry into force of this Convention;

(f) The total area containing cluster munition remnants remaining to be cleared during the proposed extension;

(g) The circumstances that have impeded the ability of the State Party to destroy all cluster munition remnants located in areas under its jurisdiction or control during the initial ten year period referred to in paragraph 1 of this Article, and those that may impede this ability during the proposed extension;

(h) The humanitarian, social, economic and environmental implications of the proposed extension; and

(i) Any other information relevant to the request for the proposed extension.

7. The Meeting of States Parties or the Review Conference shall, taking into consideration the factors referred to in paragraph 6 of this Article, including, *inter alia*, the quantities of cluster munition remnants reported, assess the request and decide by a majority of votes of States Parties present and voting whether to grant the request for an extension. The States Parties may decide to grant a shorter extension than that requested and may propose benchmarks for the extension, as appropriate.

8. Such an extension may be renewed by a period of up to five years upon the submission of a new request, in accordance with paragraphs 5, 6 and 7 of this Article. In requesting a further extension a State Party shall submit relevant additional information on what has been undertaken during the previous extension granted pursuant to this Article.

Article 5

Victim assistance

1. Each State Party with respect to cluster munition victims in areas under its jurisdiction or control shall, in accordance with applicable international humanitarian and human rights law, adequately provide age- and gender-sensitive assistance, including medical care, rehabilitation and psychological support, as well as provide for their social and economic inclusion. Each State Party shall make every effort to collect reliable relevant data with respect to cluster munition victims.

2. In fulfilling its obligations under paragraph 1 of this Article each State Party shall:

- (a) Assess the needs of cluster munition victims;
- (b) Develop, implement and enforce any necessary national laws and policies;
- (c) Develop a national plan and budget, including timeframes to carry out these activities, with a view to incorporating them within the existing national disability, development and human rights frameworks and mechanisms, while respecting the specific role and contribution of relevant actors;
- (d) Take steps to mobilize national and international resources;

- (e) Not discriminate against or among cluster munition victims, or between cluster munition victims and those who have suffered injuries or disabilities from other causes; differences in treatment should be based only on medical, rehabilitative, psychological or socio-economic needs;
- (f) Closely consult with and actively involve cluster munition victims and their representative organizations;
- (g) Designate a focal point within the government for coordination of matters relating to the implementation of this Article; and
- (h) Strive to incorporate relevant guidelines and good practices including in the areas of medical care, rehabilitation and psychological support, as well as social and economic inclusion.

Article 6
International cooperation and assistance

1. In fulfilling its obligations under this Convention each State Party has the right to seek and receive assistance.
2. Each State Party in a position to do so shall provide technical, material and financial assistance to States Parties affected by cluster munitions, aimed at the implementation of the obligations of this Convention. Such assistance may be provided, inter alia, through the United Nations system, international, regional or national organizations or institutions, non-governmental organizations or institutions, or on a bilateral basis.
3. Each State Party undertakes to facilitate and shall have the right to participate in the fullest possible exchange of equipment and scientific and technological information concerning the implementation of this Convention. The States Parties shall not impose undue restrictions on the provision and receipt of clearance and other such equipment and related technological information for humanitarian purposes.
4. In addition to any obligations it may have pursuant to paragraph 4 of Article 4 of this Convention, each State Party in a position to do so shall provide assistance for clearance and destruction of cluster munition remnants and information concerning various means and technologies related to clearance of cluster munitions, as well as lists of experts, expert agencies or national points of contact on clearance and destruction of cluster munition remnants and related activities.

5. Each State Party in a position to do so shall provide assistance for the destruction of stockpiled cluster munitions, and shall also provide assistance to identify, assess and prioritize needs and practical measures in terms of marking, risk reduction education, protection of civilians and clearance and destruction as provided in Article 4 of this Convention.
6. Where, after entry into force of this Convention, cluster munitions have become cluster munition remnants located in areas under the jurisdiction or control of a State Party, each State Party in a position to do so shall urgently provide emergency assistance to the affected State Party.
7. Each State Party in a position to do so shall provide assistance for the implementation of the obligations referred to in Article 5 of this Convention to adequately provide age- and gender-sensitive assistance, including medical care, rehabilitation and psychological support, as well as provide for social and economic inclusion of cluster munition victims. Such assistance may be provided, inter alia, through the United Nations system, international, regional or national organizations or institutions, the International Committee of the Red Cross, national Red Cross and Red Crescent Societies and their International Federation, non-governmental organizations or on a bilateral basis.
8. Each State Party in a position to do so shall provide assistance to contribute to the economic and social recovery needed as a result of cluster munition use in affected States Parties.
9. Each State Party in a position to do so may contribute to relevant trust funds in order to facilitate the provision of assistance under this Article.
10. Each State Party that seeks and receives assistance shall take all appropriate measures in order to facilitate the timely and effective implementation of this Convention, including facilitation of the entry and exit of personnel, materiel and equipment, in a manner consistent with national laws and regulations, taking into consideration international best practices.
11. Each State Party may, with the purpose of developing a national action plan, request the United Nations system, regional organizations, other States Parties or other competent intergovernmental or non-governmental institutions to assist its authorities to determine, inter alia:
 - (a) The nature and extent of cluster munition remnants located in areas under its jurisdiction or control;

- (b) The financial, technological and human resources required for the implementation of the plan;
- (c) The time estimated as necessary to clear and destroy all cluster munition remnants located in areas under its jurisdiction or control;
- (d) Risk reduction education programmes and awareness activities to reduce the incidence of injuries or deaths caused by cluster munition remnants;
- (e) Assistance to cluster munition victims; and
- (f) The coordination relationship between the government of the State Party concerned and the relevant governmental, intergovernmental or non-governmental entities that will work in the implementation of the plan.

12. States Parties giving and receiving assistance under the provisions of this Article shall cooperate with a view to ensuring the full and prompt implementation of agreed assistance programmes.

Article 7 *Transparency measures*

- 1. Each State Party shall report to the Secretary-General of the United Nations as soon as practicable, and in any event not later than 180 days after the entry into force of this Convention for that State Party, on:
 - (a) The national implementation measures referred to in Article 9 of this Convention;
 - (b) The total of all cluster munitions, including explosive submunitions, referred to in paragraph 1 of Article 3 of this Convention, to include a breakdown of their type, quantity and, if possible, lot numbers of each type;
 - (c) The technical characteristics of each type of cluster munition produced by that State Party prior to entry into force of this Convention for it, to the extent known, and those currently owned or possessed by it, giving, where reasonably possible, such categories of information as may facilitate identification and clearance of cluster munitions; at a minimum, this information shall include the dimensions, fusing, explosive content, metallic content, colour photographs and other information that may facilitate the clearance of cluster munition remnants;

- (d) The status and progress of programmes for the conversion or decommissioning of production facilities for cluster munitions;
- (e) The status and progress of programmes for the destruction, in accordance with Article 3 of this Convention, of cluster munitions, including explosive submunitions, with details of the methods that will be used in destruction, the location of all destruction sites and the applicable safety and environmental standards to be observed;
- (f) The types and quantities of cluster munitions, including explosive submunitions, destroyed in accordance with Article 3 of this Convention, including details of the methods of destruction used, the location of the destruction sites and the applicable safety and environmental standards observed;
- (g) Stockpiles of cluster munitions, including explosive submunitions, discovered after reported completion of the programme referred to in subparagraph (e) of this paragraph, and plans for their destruction in accordance with Article 3 of this Convention;
- (h) To the extent possible, the size and location of all cluster munition contaminated areas under its jurisdiction or control, to include as much detail as possible regarding the type and quantity of each type of cluster munition remnant in each such area and when they were used;
- (i) The status and progress of programmes for the clearance and destruction of all types and quantities of cluster munition remnants cleared and destroyed in accordance with Article 4 of this Convention, to include the size and location of the cluster munition contaminated area cleared and a breakdown of the quantity of each type of cluster munition remnant cleared and destroyed;
- (j) The measures taken to provide risk reduction education and, in particular, an immediate and effective warning to civilians living in cluster munition contaminated areas under its jurisdiction or control;
- (k) The status and progress of implementation of its obligations under Article 5 of this Convention to adequately provide age- and gender-sensitive assistance, including medical care, rehabilitation and psychological support, as well as provide for social and economic inclusion of cluster munition victims and to collect reliable relevant data with respect to cluster munition victims;
- (l) The name and contact details of the institutions mandated to provide information and to carry out the measures described in this paragraph;

- (m) The amount of national resources, including financial, material or in kind, allocated to the implementation of Articles 3, 4 and 5 of this Convention; and
- (n) The amounts, types and destinations of international cooperation and assistance provided under Article 6 of this Convention.
- The information provided in accordance with paragraph 1 of this Article shall be updated by the States Parties annually, covering the previous calendar year, and reported to the Secretary-General of the United Nations not later than 30 April of each year.
 - The Secretary-General of the United Nations shall transmit all such reports received to the States Parties.

Article 8

Facilitation and clarification of compliance

- The States Parties agree to consult and cooperate with each other regarding the implementation of the provisions of this Convention and to work together in a spirit of cooperation to facilitate compliance by States Parties with their obligations under this Convention.
- If one or more States Parties wish to clarify and seek to resolve questions relating to a matter of compliance with the provisions of this Convention by another State Party, it may submit, through the Secretary-General of the United Nations, a Request for Clarification of that matter to that State Party. Such a request shall be accompanied by all appropriate information. Each State Party shall refrain from unfounded Requests for Clarification, care being taken to avoid abuse. A State Party that receives a Request for Clarification shall provide, through the Secretary-General of the United Nations, within 28 days to the requesting State Party all information that would assist in clarifying the matter.

- If the requesting State Party does not receive a response through the Secretary-General of the United Nations within that time period, or deems the response to the Request for Clarification to be unsatisfactory, it may submit the matter through the Secretary-General of the United Nations to the next Meeting of States Parties. The Secretary-General of the United Nations shall transmit the submission, accompanied by all appropriate information pertaining to the Request for Clarification, to all States Parties. All such information shall be presented to the requested State Party which shall have the right to respond.

- Pending the convening of any Meeting of States Parties, any of the States Parties concerned may request the Secretary-General of the United Nations to exercise his or her good offices to facilitate the clarification requested.
- Where a matter has been submitted to it pursuant to paragraph 3 of this Article, the Meeting of States Parties shall first determine whether to consider that matter further, taking into account all information submitted by the States Parties concerned. If it does so determine, the Meeting of States Parties may suggest to the States Parties concerned ways and means further to clarify or resolve the matter under consideration, including the initiation of appropriate procedures in conformity with international law. In circumstances where the issue at hand is determined to be due to circumstances beyond the control of the requested State Party, the Meeting of States Parties may recommend appropriate measures, including the use of cooperative measures referred to in Article 6 of this Convention.

- In addition to the procedures provided for in paragraphs 2 to 5 of this Article, the Meeting of States Parties may decide to adopt such other general procedures or specific mechanisms for clarification of compliance, including facts, and resolution of instances of non-compliance with the provisions of this Convention as it deems appropriate.

Article 9

National implementation measures

Each State Party shall take all appropriate legal, administrative and other measures to implement this Convention, including the imposition of penal sanctions to prevent and suppress any activity prohibited to a State Party under this Convention undertaken by persons or on territory under its jurisdiction or control.

Article 10

Settlement of disputes

- When a dispute arises between two or more States Parties relating to the interpretation or application of this Convention, the States Parties concerned shall consult together with a view to the expeditious settlement of the dispute by negotiation or by other peaceful means of their choice, including recourse to the Meeting of States Parties and referral to the International Court of Justice in conformity with the Statute of the Court.
- The Meeting of States Parties may contribute to the settlement of the dispute by whatever means it deems appropriate, including offering its good

offices, calling upon the States Parties concerned to start the settlement procedure of their choice and recommending a time-limit for any agreed procedure.

Article 11
Meetings of States Parties

1. The States Parties shall meet regularly in order to consider and, where necessary, take decisions in respect of any matter with regard to the application or implementation of this Convention, including:

- (a) The operation and status of this Convention;
- (b) Matters arising from the reports submitted under the provisions of this Convention;
- (c) International cooperation and assistance in accordance with Article 6 of this Convention;
- (d) The development of technologies to clear cluster munition remnants;
- (e) Submissions of States Parties under Articles 8 and 10 of this Convention; and
- (f) Submissions of States Parties as provided for in Articles 3 and 4 of this Convention.

2. The first Meeting of States Parties shall be convened by the Secretary-General of the United Nations within one year of entry into force of this Convention. The subsequent meetings shall be convened by the Secretary-General of the United Nations annually until the first Review Conference.

3. States not party to this Convention, as well as the United Nations, other relevant international organizations or institutions, regional organizations, the International Committee of the Red Cross, the International Federation of Red Cross and Red Crescent Societies and relevant non-governmental organizations may be invited to attend these meetings as observers in accordance with the agreed rules of procedure.

Article 12
Review Conferences

1. A Review Conference shall be convened by the Secretary-General of the United Nations five years after the entry into force of this Convention. Further Review Conferences shall be convened by the Secretary-General of the United Nations if so requested by one or more States Parties, provided that the interval between Review Conferences shall in no case be less than five years. All States Parties to this Convention shall be invited to each Review Conference.

2. The purpose of the Review Conference shall be:

- (a) To review the operation and status of this Convention;
 - (b) To consider the need for and the interval between further Meetings of States Parties referred to in paragraph 2 of Article 11 of this Convention; and
 - (c) To take decisions on submissions of States Parties as provided for in Articles 3 and 4 of this Convention.
3. States not party to this Convention, as well as the United Nations, other relevant international organizations or institutions, regional organizations, the International Committee of the Red Cross, the International Federation of Red Cross and Red Crescent Societies and relevant non-governmental organizations may be invited to attend each Review Conference as observers in accordance with the agreed rules of procedure.

Article 13
Amendments

1. At any time after its entry into force any State Party may propose amendments to this Convention. Any proposal for an amendment shall be communicated to the Secretary-General of the United Nations, who shall circulate it to all States Parties and shall seek their views on whether an Amendment Conference should be convened to consider the proposal. If a majority of the States Parties notify the Secretary-General of the United Nations no later than 90 days after its circulation that they support further consideration of the proposal, the Secretary-General of the United Nations shall convene an Amendment Conference to which all States Parties shall be invited.

2. States not party to this Convention, as well as the United Nations, other relevant international organizations or institutions, regional organizations, the

International Committee of the Red Cross, the International Federation of Red Cross and Red Crescent Societies and relevant non-governmental organizations may be invited to attend each Amendment Conference as observers in accordance with the agreed rules of procedure.

3. The Amendment Conference shall be held immediately following a Meeting of States Parties or a Review Conference unless a majority of the States Parties request that it be held earlier.
4. Any amendment to this Convention shall be adopted by a majority of two-thirds of the States Parties present and voting at the Amendment Conference. The Depository shall communicate any amendment so adopted to all States.
5. An amendment to this Convention shall enter into force for States Parties that have accepted the amendment on the date of deposit of acceptances by a majority of the States which were Parties at the date of adoption of the amendment. Thereafter it shall enter into force for any remaining State Party on the date of deposit of its instrument of acceptance.

Article 14

Costs and administrative tasks

1. The costs of the Meetings of States Parties, the Review Conferences and the Amendment Conferences shall be borne by the States Parties and States not party to this Convention participating therein, in accordance with the United Nations scale of assessment adjusted appropriately.
2. The costs incurred by the Secretary-General of the United Nations under Articles 7 and 8 of this Convention shall be borne by the States Parties in accordance with the United Nations scale of assessment adjusted appropriately.
3. The performance by the Secretary-General of the United Nations of administrative tasks assigned to him or her under this Convention is subject to an appropriate United Nations mandate.

Article 15

Signature

This Convention, done at Dublin on 30 May 2008, shall be open for signature at Oslo by all States on 3 December 2008 and thereafter at United Nations Headquarters in New York until its entry into force.

Article 16

Ratification, acceptance, approval or accession

1. This Convention is subject to ratification, acceptance or approval by the Signatories.
2. It shall be open for accession by any State that has not signed the Convention.
3. The instruments of ratification, acceptance, approval or accession shall be deposited with the Depository.

Article 17

Entry into force

1. This Convention shall enter into force on the first day of the sixth month after the month in which the thirtieth instrument of ratification, acceptance, approval or accession has been deposited.
2. For any State that deposits its instrument of ratification, acceptance, approval or accession after the date of the deposit of the thirtieth instrument of ratification, acceptance, approval or accession, this Convention shall enter into force on the first day of the sixth month after the date on which that State has deposited its instrument of ratification, acceptance, approval or accession.

Article 18

Provisional application

Any State may, at the time of its ratification, acceptance, approval or accession, declare that it will apply provisionally Article 1. of this Convention pending its entry into force for that State.

Article 19

Reservations

The Articles of this Convention shall not be subject to reservations.

Article 20

Duration and withdrawal

1. This Convention shall be of unlimited duration.

2. Each State Party shall, in exercising its national sovereignty, have the right to withdraw from this Convention. It shall give notice of such withdrawal to all other States Parties, to the Depository and to the United Nations Security Council. Such instrument of withdrawal shall include a full explanation of the reasons motivating withdrawal.

3. Such withdrawal shall only take effect six months after the receipt of the instrument of withdrawal by the Depository. If, however, on the expiry of that six-month period, the withdrawing State Party is engaged in an armed conflict, the withdrawal shall not take effect before the end of the armed conflict.

Article 21
Relations with States not party to this Convention

1. Each State Party shall encourage States not party to this Convention to ratify, accept, approve or accede to this Convention, with the goal of attracting the adherence of all States to this Convention.

2. Each State Party shall notify the governments of all States not party to this Convention, referred to in paragraph 3 of this Article, of its obligations under this Convention, shall promote the norms it establishes and shall make its best efforts to discourage States not party to this Convention from using cluster munitions.

3. Notwithstanding the provisions of Article 1 of this Convention and in accordance with international law, States Parties, their military personnel or nationals, may engage in military cooperation and operations with States not party to this Convention that might engage in activities prohibited to a State Party.

4. Nothing in paragraph 3 of this Article shall authorize a State Party:

- (a) To develop, produce or otherwise acquire cluster munitions;
- (b) To itself stockpile or transfer cluster munitions;
- (c) To itself use cluster munitions; or
- (d) To expressly request the use of cluster munitions in cases where the choice of munitions used is within its exclusive control.

Article 22
Depository

The Secretary-General of the United Nations is hereby designated as the Depository of this Convention.

Article 23
Authentic texts

The Arabic, Chinese, English, French, Russian and Spanish texts of this Convention shall be equally authentic.

**The Montreux Document on pertinent international legal
obligations and good practices for States related to
operations of private military and security companies during
armed conflict, 2008**

Preface

This document is the product of an initiative launched cooperatively by the Government of Switzerland and the International Committee of the Red Cross. It was developed with the participation of governmental experts from Afghanistan, Angola, Australia, Austria, Canada, China, France, Germany, Iraq, Poland, Sierra Leone, South Africa, Sweden, Switzerland, the United Kingdom of Great Britain and Northern Ireland, Ukraine, and the United States of America in meetings convened in January and November 2006, November 2007, and April and September 2008. Representatives of civil society and of the private military and security industry were consulted.

The following understandings guided the development of this document:

1. That certain well-established rules of international law apply to States in their relations with private military and security companies (PMSCs) and their operation during armed conflict, in particular under international humanitarian law and human rights law;
2. That this document recalls existing legal obligations of States and PMSCs and their personnel (Part One), and provides States with good practices to promote compliance with international humanitarian law and human rights law during armed conflict (Part Two);
3. That this document is not a legally binding instrument and does not affect existing obligations of States under customary international law or under international agreements to which they are parties, in particular their obligations under the Charter of the United Nations (especially its articles 2(4) and 51);
4. That this document should therefore not be interpreted as limiting, prejudicing or enhancing in any manner existing obligations under international law, or as creating or developing new obligations under international law;
5. That existing obligations and good practices may also be instructive for post-conflict situations and for other, comparable situations; however, that international humanitarian law is applicable only during armed conflict;
6. That cooperation, information sharing and assistance between States, commensurate with each State's capacities, is desirable in order to achieve full respect for international humanitarian law and human rights law, as is cooperative implementation with the private military and security industry and other relevant actors;
7. That this document should not be construed as endorsing the use of PMSCs in any particular circumstance but seeks to recall legal obligations and to recommend good practices if the decision has been made to contract PMSCs;
8. That while this document is addressed to States, the good practices may be of value for other entities such as international organizations, NGOs and companies that contract PMSCs, as well as for PMSCs themselves;
9. That for the purposes of this document:
 - a) "PMSCs" are private business entities that provide military and/or security services, irrespective of how they describe themselves. Military and security services include, in particular, armed guarding and protection of persons and objects, such as convoys, buildings and other places; maintenance and operation of weapons systems; prisoner detention; and advice to or training of local forces and security personnel.

THE MONTREUX DOCUMENT

On pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict

Montreux, 17 September 2008

- b) "Personnel of a PMSC" are persons employed by, through direct hire or under a contract with, a PMSC, including its employees and managers.
- c) "Contracting States" are States that directly contract for the services of PMSCs, including, as appropriate, where such a PMSC subcontracts with another PMSC.
- d) "Territorial States" are States on whose territory PMSCs operate.
- e) "Home States" are States of nationality of a PMSC, i.e. where a PMSC is registered or incorporated; if the State where the PMSC is incorporated is not the one where it has its principal place of management, then the State where the PMSC has its principal place of management is the "Home State".

The participating States commend this document to the attention of other States, international organizations, NGOs, the private military and security industry and other relevant actors, which are invited to adopt those good practices that they consider appropriate for their operations. The participating States invite other States and international organizations to communicate their support for this document to the Federal Department of Foreign Affairs of Switzerland. The participating States also declare their readiness to review and, if necessary, to revise this document in order to take into account new developments.

Part One

Pertinent international legal obligations relating to private military and security companies

Introduction

The following statements aim to recall certain existing international legal obligations of States regarding private military and security companies. The statements are drawn from various international humanitarian and human rights agreements and customary international law. This document, and the statements herein, do not create legal obligations. Each State is responsible for complying with the obligations it has undertaken pursuant to international agreements to which it is a party, subject to any reservations, understandings and declarations made, and to customary international law.

A. Contracting States

1. Contracting States retain their obligations under international law, even if they contract PMSCs to perform certain activities. If they are occupying powers, they have an obligation to take all measures in their power to restore, and ensure, as far as possible, public order and safety, i.e. exercise vigilance in preventing violations of international humanitarian law and human rights law.
2. Contracting States have an obligation not to contract PMSCs to carry out activities that international humanitarian law explicitly assigns to a State agent or authority, such as exercising the power of the responsible officer over prisoner-of-war camps or places of internment of civilians in accordance with the Geneva Conventions.
3. Contracting States have an obligation, within their power, to ensure respect for international humanitarian law by PMSCs they contract, in particular to:
 - a) ensure that PMSCs that they contract and their personnel are aware of their obligations and trained accordingly;
 - b) not encourage or assist in, and take appropriate measures to prevent, any violations of international humanitarian law by personnel of PMSCs;
 - c) take measures to suppress violations of international humanitarian law committed by the personnel of PMSCs through appropriate means, such as military regulations, administrative orders and other regulatory measures as well as administrative, disciplinary or judicial sanctions, as appropriate.
4. Contracting States are responsible to implement their obligations under international human rights law, including by adopting such legislative and other measures as may be necessary to give effect to these obligations. To this end they have the obligation, in specific circumstances, to take appropriate measures to prevent, investigate and provide effective remedies for relevant misconduct of PMSCs and their personnel.
5. Contracting States have an obligation to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, grave breaches of the Geneva Conventions and, where applicable, Additional Protocol I, and have an obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave

breaches and bring such persons, regardless of their nationality, before their own courts. They may also, if they prefer, and in accordance with the provisions of their own legislation, hand such persons over for trial to another State concerned, provided such State has made out a *prima facie* case, or to an international criminal tribunal.

6. Contracting States also have an obligation to investigate and, as required by international law, or otherwise as appropriate, prosecute, extradite or surrender persons suspected of having committed other crimes under international law, such as torture or hostage taking, in accordance with their obligations under international law. Such prosecutions are to be carried out in accordance with international law providing for fair trial, mindful that sanctions be commensurate with the gravity of the crime.
7. Although entering into contractual relations does not in itself engage the responsibility of Contracting States, the latter are responsible for violations of international humanitarian law, human rights law, or other rules of international law committed by PMSCs or their personnel where such violations are attributable to the Contracting State, consistent with customary international law, in particular if they are:
 - a) incorporated by the State into their regular armed forces in accordance with its domestic legislation;
 - b) members of organized armed forces, groups or units under a command responsible to the State;
 - c) empowered to exercise elements of governmental authority if they are acting in that capacity (i.e. are formally authorized by law or regulation to carry out functions normally conducted by organs of the State); or
 - d) in fact acting on the instructions of the State (i.e. the State has specifically instructed the private actor's conduct) or under its direction or control (i.e. actual exercise of effective control by the State over a private actor's conduct).
8. Contracting States have an obligation to provide reparations for violations of international humanitarian law and human rights law caused by wrongful conduct of the personnel of PMSCs when such conduct is attributable to the Contracting States in accordance with the customary international law of State responsibility.

B. Territorial States

9. Territorial States have an obligation, within their power, to ensure respect for international humanitarian law by PMSCs operating on their territory, in particular to:
 - a) disseminate, as widely as possible, the text of the Geneva Conventions and other relevant norms of international humanitarian law among PMSCs and their personnel;
 - b) not encourage or assist in, and take appropriate measures to prevent, any violations of international humanitarian law by personnel of PMSCs;
 - c) take measures to suppress violations of international humanitarian law committed by the personnel of PMSCs through appropriate means such as military regulations, administrative orders and other regulatory measures as well as administrative, disciplinary or judicial sanctions, as appropriate.
10. Territorial States are responsible to implement their obligations under international human rights law, including by adopting such legislative and other measures as may be necessary to give effect to these obligations. To this end they have the obligation, in specific circumstances, to take appropriate measures to prevent, investigate and provide effective remedies for relevant misconduct of PMSCs and their personnel.

11. Territorial States have an obligation to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, grave breaches of the Geneva Conventions and, where applicable, Additional Protocol I, and have an obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches and bring such persons, regardless of their nationality, before their own courts. They may also, if they prefer, and in accordance with the provisions of their own legislation, hand such persons over for trial to another State concerned, provided such State has made out a *prima facie* case, or to an international criminal tribunal.

12. Territorial States also have an obligation to investigate and, as required by international law, or otherwise as appropriate, prosecute, extradite or surrender persons suspected of having committed other crimes under international law, such as torture or hostage taking, in accordance with their obligations under international law. Such prosecutions are to be carried out in accordance with international law providing for fair trial, mindful that sanctions be commensurate with the gravity of the crime.
13. In situations of occupation, the obligations of Territorial States are limited to areas in which they are able to exercise effective control.

C. Home States

14. Home States have an obligation, within their power, to ensure respect for international humanitarian law by PMSCs of their nationality, in particular to:
 - a) disseminate, as widely as possible, the text of the Geneva Conventions and other relevant norms of international humanitarian law among PMSCs and their personnel;
 - b) not encourage or assist in, and take appropriate measures to prevent, any violations of international humanitarian law by personnel of PMSCs;
 - c) take measures to suppress violations of international humanitarian law committed by the personnel of PMSCs through appropriate means such as administrative or other regulatory measures as well as administrative, disciplinary or judicial sanctions, as appropriate.
15. Home States are responsible to implement their obligations under international human rights law, including by adopting such legislative and other measures as may be necessary to give effect to these obligations. To this end they have the obligation, in specific circumstances, to take appropriate measures to prevent, investigate and provide effective remedies for relevant misconduct of PMSCs and their personnel.
16. Home States have an obligation to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, grave breaches of the Geneva Conventions and, where applicable, Additional Protocol I, and have an obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches and bring such persons, regardless of their nationality, before their own courts. They may also, if they prefer, and in accordance with the provisions of their own legislation, hand such persons over for trial to another State concerned, provided such State has made out a *prima facie* case, or to an international criminal tribunal.
17. Home States also have an obligation to investigate and, as required by international law, or otherwise as appropriate, prosecute, extradite or surrender persons suspected of having committed other crimes under international law, such as torture or hostage taking, in accordance with their obligations under international law. Such prosecutions are to be carried out in accordance with international law providing for fair trial, mindful that sanctions be commensurate with the gravity of the crime.

D. All other States

18. All other States have an obligation, within their power, to ensure respect for international humanitarian law. They have an obligation to refrain from encouraging or assisting in violations of international humanitarian law by any party to an armed conflict.

19. All other States are responsible to implement their obligations under international human rights law, including by adopting such legislative and other measures as may be necessary to give effect to these obligations.

20. All other States have an obligation to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, grave breaches of the Geneva Conventions and, where applicable, Additional Protocol I, and have an obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches and bring such persons, regardless of their nationality, before their own courts. They may also, if they prefer, and in accordance with the provisions of their own legislation, hand such persons over for trial to another State concerned, provided such State has made out a *prima facie* case, or to an international criminal tribunal.

21. All other States also have an obligation to investigate and, as required by international law, or otherwise as appropriate, prosecute, extradite or surrender persons suspected of having committed other crimes under international law, such as torture or hostage taking, in accordance with their obligations under international law. Such prosecutions are to be carried out in accordance with international law providing for fair trial, mindful that sanctions be commensurate with the gravity of the crime.

E. PMSCs and their personnel

22. PMSCs are obliged to comply with international humanitarian law or human rights law imposed upon them by applicable national law, as well as other applicable national law such as criminal law, tax law, immigration law, labour law, and specific regulations on private military or security services.

23. The personnel of PMSCs are obliged to respect the relevant national law, in particular the national criminal law, of the State in which they operate, and, as far as applicable, the law of the States of their nationality.

24. The status of the personnel of PMSCs is determined by international humanitarian law, on a case-by-case basis, in particular according to the nature and circumstances of the functions in which they are involved.

25. If they are civilians under international humanitarian law, the personnel of PMSCs may not be the object of attack, unless and for such time as they directly participate in hostilities.

26. The personnel of PMSCs:

- a) are obliged, regardless of their status, to comply with applicable international humanitarian law;
- b) are protected as civilians under international humanitarian law, unless they are incorporated into the regular armed forces of a State or are members of organized armed forces, groups or units under a command responsible to the State; or otherwise lose their protection as determined by international humanitarian law;
- c) are entitled to prisoner-of-war status in international armed conflict if they are persons accompanying the armed forces meeting the requirements of article 4A(4) of the Third Geneva Convention;

d) to the extent they exercise governmental authority, have to comply with the State's obligations under international human rights law;

e) are subject to prosecution if they commit conduct recognized as crimes under applicable national or international law.

F. Superior responsibility

27. Superiors of PMSC personnel, such as:

- a) governmental officials, whether they are military commanders or civilian superiors, or
- b) directors or managers of PMSCs, may be liable for crimes under international law committed by PMSC personnel under their effective authority and control, as a result of their failure to properly exercise control over them, in accordance with the rules of international law. Superior responsibility is not engaged solely by virtue of a contract.

Part Two

Good practices relating to private military and security companies

Introduction

This Part contains a description of good practices that aims to provide guidance and assistance to States in ensuring respect for international humanitarian law and human rights law and otherwise promoting responsible conduct in their relationships with PMSCs operating in areas of armed conflict. They may also provide useful guidance for States in their relationships with PMSCs operating outside of areas of armed conflict.

The good practices do not have legally binding effect and are not meant to be exhaustive. It is understood that a State may not have the capacity to implement all the good practices, and that no State has the legal obligation to implement any particular good practice, whether that State is a Contracting State, a Territorial State, or a Home State. States are invited to consider these good practices in defining their relationships with PMSCs, recognizing that a particular good practice may not be appropriate in all circumstances and emphasizing that this Part is not meant to imply that States should necessarily follow all these practices as a whole.

The good practices are intended, *inter alia*, to assist States to implement their obligations under international humanitarian law and human rights law. However, in considering regulation, States may also need to take into account obligations they have under other branches of international law, including as members of international organizations such as the United Nations, and under international law relating to trade and government procurement. They may also need to take into account bilateral agreements between Contracting States and Territorial States. Moreover, States are encouraged to fully implement relevant provisions of international instruments to which they are Parties, including anti-corruption, anti-organized crime and firearms conventions. Furthermore, any of these good practices will need to be adapted in practice to the specific situation and the State's legal system and capacity.

A. Good practices for Contracting States

States contemplating to contract PMSCs should evaluate whether their legislation, as well as procurement and contracting practices, are adequate for contracting PMSCs. This is particularly relevant where Contracting States use the services of a PMSC in a State where law enforcement or regulatory capacities are compromised.

In many instances, the good practices for Contracting States may also indicate good practices for other clients of PMSCs, such as international organizations, NGOs and companies.

In this sense, good practices for Contracting States include the following:

I. Determination of services

1. To determine which services may or may not be contracted out to PMSCs; in determining which services may not be contracted out, Contracting States take into account factors such as whether a particular service could cause PMSC personnel to become involved in direct participation in hostilities.

II. Procedure for the selection and contracting of PMSCs

2. To assess the capacity of the PMSC to carry out its activities in conformity with relevant national law, international humanitarian law and international human rights law, taking into account the inherent risk associated with the services to be performed, for instance by:
 - a) acquiring information relating to the principal services the PMSC has provided in the past;
 - b) obtaining references from clients for whom the PMSC has previously provided similar services to those the Contracting State is seeking to acquire;
 - c) acquiring information relating to the PMSC's ownership structure and conducting background checks on the PMSC and its superior personnel, taking into account relations with subcontractors, subsidiary corporations and ventures.
3. To provide adequate resources and draw on relevant expertise for selecting and contracting PMSCs.
4. To ensure transparency and supervision in the selection and contracting of PMSCs. Relevant mechanisms may include:
 - a) public disclosure of PMSC contracting regulations, practices and processes;
 - b) public disclosure of general information about specific contracts, if necessary redacted to address national security, privacy and commercial confidentiality requirements;
 - c) publication of an overview of incident reports or complaints, and sanctions taken where misconduct has been proven; if necessary redacted to address national security, privacy and commercial confidentiality requirements;
 - d) oversight by parliamentary bodies, including through annual reports or notification of particular contracts to such bodies.

III. Criteria for the selection of PMSCs

5. To adopt criteria that include quality indicators relevant to ensuring respect for relevant national law, international humanitarian law and human rights law, as set out in good practices 6 to 13. Contracting States should consider ensuring that lowest price not be the only criterion for the selection of PMSCs.
6. To take into account, within available means, the past conduct of the PMSC and its personnel, which includes ensuring that the PMSC has:
 - a) no reliably attested record of involvement in serious crime (including organized crime, violent crime, sexual offences, violations of international humanitarian law, bribery and corruption) and, insofar as the PMSC or its personnel had engaged in past unlawful conduct, has appropriately remedied such conduct, including by effectively cooperating with official authorities, taking disciplinary measures against those involved, and, where appropriate and consistent with findings of wrongdoing, providing individuals injured by their conduct with appropriate reparation;
 - b) conducted comprehensive inquiries within applicable law regarding the extent to which any of its personnel, particularly those who are required to carry weapons as part of their duties, have a reliably attested record of not having been involved in serious crime or have not been dishonourably discharged from armed or security forces;
 - c) not previously been rejected from a contract due to misconduct of the PMSC or its personnel.
7. To take into account the financial and economic capacity of the PMSC, including for liabilities that it may incur.
8. To take into account whether it and its personnel possess or are in the process of obtaining requisite registrations, licenses or authorizations.
9. To take into account whether it maintains accurate and up-to-date personnel and property records, in particular, with regard to weapons and ammunition, available for inspection on demand by the Contracting State and other appropriate authorities.

10. To take into account that the PMSC's personnel are sufficiently trained, both prior to any deployment and on an ongoing basis, to respect relevant national law, international humanitarian law and human rights law; and to establish goals to facilitate uniformity and standardization of training requirements. Training could include general and task- and context-specific topics, preparing personnel for performance under the specific contract and in the specific environment, such as:
- rules on the use of force and firearms;
 - international humanitarian law and human rights law;
 - religious, gender, and cultural issues, and respect for the local population;
 - handling complaints by the civilian population, in particular by transmitting them to the appropriate authority;
 - measures against bribery, corruption, and other crimes.

Contracting States consider continuously reassessing the level of training by, for example, requiring regular reporting on the part of PMSCs.

11. To take into account whether the PMSC:
- acquires its equipment, in particular its weapons, lawfully;
 - uses equipment, in particular weapons, that is not prohibited by international law;
 - has complied with contractual provisions concerning return and/or disposal of weapons and ammunition.
12. To take into account the PMSC's internal organization and regulations, such as:
- the existence and implementation of policies relating to international humanitarian law and human rights law, especially on the use of force and firearms, as well as policies against bribery, corruption, and other crimes;
 - the existence of monitoring and supervisory as well as internal accountability mechanisms, such as:
 - internal investigation and disciplinary arrangements in case of allegations of wrongdoing by its personnel;
 - mechanisms enabling persons affected by the conduct of the personnel of the PMSC to lodge a complaint, including both third party complaint mechanisms and whistleblower protection arrangements; and
 - regular performance reporting, specific incident reporting, and reporting on demand to the Contracting State and under certain circumstances other appropriate authorities;
 - requiring PMSC personnel and its subcontracted personnel to report any misconduct to the PMSC's management or a competent authority.

13. To consider the respect of the PMSC for the welfare of its personnel, as protected by labour law and other relevant national law. Relevant factors may include:
- providing personnel a copy of any contract to which they are party in a language they understand;
 - providing personnel with adequate pay and remuneration arrangements commensurate to their responsibilities and working conditions;
 - adopting operational safety and health policies;
 - ensuring personnel unrestricted access to their own travel documents; and
 - preventing unlawful discrimination in employment.

IV. Terms of contract with PMSCs

14. To include contractual clauses and performance requirements that ensure respect for relevant national law, international humanitarian law and human rights law by the contracted PMSC. Such clauses, reflecting and implementing the quality indicators referred to above as selection criteria, may include:
- past conduct (good practice 6);
 - financial and economic capacity (good practice 7);

- possession of required registration, licenses or authorizations (good practice 8);
- personnel and property records (good practice 9);
- training (good practice 10);
- lawful acquisition and use of equipment, in particular weapons (good practice 11);
- internal organization and regulation and accountability (good practice 12);
- welfare of personnel (good practice 13);

Contractual clauses may also provide for the Contracting State's ability to terminate the contract for failure to comply with contractual provisions. They may also specify the weapons required for contract performance, that PMSCs obtain appropriate visas or other authorizations from the Territorial State, and that appropriate reparation be provided to those harmed by the misconduct of PMSCs and their personnel.

15. To require by contract that the conduct of any subcontracted PMSC is in conformity with relevant national law, international humanitarian law and international human rights law, including by:
- establishing the criteria and qualifications for the selection and ongoing employment of subcontracted PMSCs and personnel;
 - requiring the PMSC to demonstrate that subcontractors comply with equivalent requirements as the PMSC initially contracted by the Contracting State;
 - ensuring that the PMSC is liable, as appropriate and within applicable law, for the conduct of its subcontractors.
16. To require, if consistent with force protection requirements and safety of the assigned mission, that the personnel of the PMSC be personally identifiable whenever they are carrying out activities in discharge of their responsibilities under a contract. Identification should:
- be visible from a distance where mission and context allow, or consist of a non-transferable identification card that is shown upon demand;
 - allow for a clear distinction between a PMSC's personnel and the public authorities in the State where the PMSC operates.
- The same should apply to all means of transport used by PMSCs.
17. To consider pricing and duration of a specific contract as a way to promote relevant international humanitarian law and human rights law. Relevant mechanisms may include:
- securities or bonds for contractual performance;
 - financial rewards or penalties and incentives;
 - opportunities to compete for additional contracts.
18. To require, in consultation with the Territorial State, respect for relevant regulations and rules of conduct by PMSCs and their personnel, including rules on the use of force and firearms, such as:
- using force and firearms only when necessary in self-defence or defence of third persons;
 - immediate reporting to and cooperation with competent authorities, including the appropriate contracting official, in the case of use of force and firearms.

V. Monitoring compliance and ensuring accountability

19. To provide for criminal jurisdiction in their national legislation over crimes under international law and their national law committed by PMSCs and their personnel and, in addition, to consider establishing:
- corporate criminal responsibility for crimes committed by the PMSC, consistent with the Contracting State's national legal system;
 - criminal jurisdiction over serious crimes committed by PMSC personnel abroad.

20. To provide for non-criminal accountability mechanisms for improper or unlawful conduct of PMSCs and their personnel, including:

- a) contractual sanctions commensurate to the conduct, including:
 - i. immediate or graduated termination of the contract;
 - ii. financial penalties;
 - iii. removal from consideration for future contracts, possibly for a set time period;
 - iv. removal of individual wrongdoers from the performance of the contract;
- b) referral of the matter to competent investigative authorities;
- c) providing for civil liability, as appropriate.

21. To provide for, in addition to the measures in good practices 19 and 20, appropriate administrative and other monitoring mechanisms to ensure the proper execution of the contract and the accountability of contracted PMSCs and their personnel for their improper and unlawful conduct; in particular to:

- a) ensure that those mechanisms are adequately resourced and have independent audit and investigation capacity;
- b) provide Contracting State government personnel on site with the capacity and authority to oversee proper execution of the contract by the PMSC and the PMSC's subcontractors;
- c) train relevant government personnel, such as military personnel, for foreseeable interactions with PMSC personnel;
- d) collect information concerning PMSCs and personnel contracted and deployed, and on violations and investigations concerning their alleged improper and unlawful conduct;
- e) establish control arrangements, allowing it to veto or remove particular PMSC personnel during contractual performance;
- f) engage PMSCs, Territorial States, Home States, trade associations, civil society and other relevant actors to foster information sharing and develop such mechanisms.

22. When negotiating agreements with Territorial States which contain rules affecting the legal status of and jurisdiction over PMSCs and their personnel:

- a) to consider the impact of the agreements on the compliance with national laws and regulations;
- b) to address the issue of jurisdiction and immunities to ascertain proper coverage and appropriate civil, criminal, and administrative remedies for misconduct, in order to ensure accountability of PMSCs and their personnel.

23. To cooperate with investigating or regulatory authorities of Territorial and Home States, as appropriate, in matters of common concern regarding PMSCs.

B. Good practices for Territorial States

The following good practices aim to provide guidance to Territorial States for governing the supply of military and security services by PMSCs and their personnel on their territory. Territorial States should evaluate whether their domestic legal framework is adequate to ensure that the conduct of PMSCs and their personnel is in conformity with relevant national law, international humanitarian law and human rights law or whether it needs to establish further arrangements to regulate the activities of PMSCs.

Acknowledging the particular challenges faced by Territorial States in armed conflict, Territorial States may accept information provided by the Contracting State concerning the ability of a PMSC to carry out its activities in conformity with international humanitarian law, human rights law and relevant good practices.

In this sense, good practices for Territorial States include the following:

I. Determination of services

24. To determine which services may or may not be carried out on their territory by PMSCs or their personnel; in determining which services may not be carried out, Territorial States take into account factors such as whether a particular service could cause PMSC personnel to become involved in direct participation in hostilities.

II. Authorization to provide military and security services

25. To require PMSCs to obtain an authorization to provide military and security services in their territory ("authorization"), including by requiring:

- a) PMSCs to obtain an operating license valid for a limited and renewable period ("corporate operating license"), or for specific services ("specific operating license"), taking into account the fulfilment of the quality criteria set out in good practices 31 to 38; and/or;
- b) individuals to register or obtain a license in order to carry out military or security services for PMSCs.

III. Procedure with regard to authorizations

26. To designate a central authority competent for granting authorizations.

27. To allocate adequate resources and trained personnel to handle authorizations properly and timely.

28. To assess, in determining whether to grant an authorization, the capacity of the PMSC to carry out its activities in conformity with relevant national law, international humanitarian law and international human rights law, taking into account the inherent risk associated with the services to be performed, for instance by:

- a) acquiring information relating to the principal services the PMSC has provided in the past;
- b) obtaining references from clients for whom the PMSC has previously provided similar services or clients in the Territorial State;
- c) acquiring information relating to the PMSC's ownership structure and conduct background checks on the PMSC and its personnel, taking into account relations with subcontractors; subsidiary corporations and ventures, or obtain information from the Contracting State on these matters.

29. To ensure transparency with regard to authorizations. Relevant mechanisms may include:

- a) public disclosure of authorization regulations and procedures;
- b) public disclosure of general information on granted authorizations, including on the identity of authorized PMSCs and their number of personnel, if necessary redacted to address national security, privacy and commercial confidentiality requirements;
- c) publication of an overview of incident reports or complaints, and sanctions taken where misconduct has been proven; if necessary redacted to address national security, privacy and commercial confidentiality requirements;
- d) oversight by parliamentary bodies, including through annual reports or notification of particular contracts to such bodies;
- e) publishing and adhering to fair and non-discriminatory fee schedules for authorizations.

IV. Criteria for granting an authorization

30. To ensure that PMSCs fulfil certain quality criteria relevant for the respect of relevant national law, international humanitarian law and human rights law by the PMSC and its personnel, including those set out below.

31. To require that the conduct of PMSCs and of any PMSC subcontracted is in conformity with relevant national law, international humanitarian law and international human rights law,

- which includes ensuring that:
- a) the PMSC notifies any subcontracting of military and security services to the authorization authority;
 - b) the PMSC can demonstrate that its subcontractors comply with equivalent requirements as the PMSC which initially obtained an authorization by the Territorial State;
 - c) the subcontractor is in possession of an authorization;
 - d) the PMSC initially granted authorization is liable, as appropriate and within applicable law, for the conduct of its subcontractors.

32. To take into account, within available means, the past conduct of the PMSC and its personnel, which includes ensuring that the PMSC has:
 - a) no reliably attested record of involvement in serious crime (including organized crime, violent crime, sexual offences, violations of international humanitarian law, bribery and corruption) and, insofar as the PMSC or its personnel had engaged in past unlawful conduct, has appropriately dealt with such conduct, including by effectively cooperating with official authorities, taking disciplinary measures against those involved, and where appropriate and consistent with findings of wrongdoing, providing individuals injured by their conduct with appropriate reparation;
 - b) conducted comprehensive inquiries within applicable law regarding the extent to which any of its personnel, particularly those who are required to carry weapons as part of their duties, have a reliably attested record of not having been involved in serious crime or have not been dishonourably discharged from armed or security forces;
 - c) not previously had an operating license revoked for misconduct of the PMSC or its personnel.

33. To take into account the financial and economic capacity of the PMSC, including for liabilities that it may incur.

34. To take into account whether the PMSC maintains accurate and up-to-date personnel and property records, in particular, with regard to weapons and ammunition, available for inspection on demand by the Territorial State and other authorities.

35. To take into account that the PMSC's personnel are sufficiently trained, both prior to any deployment and on an ongoing basis, to respect relevant national law, international humanitarian law and human rights law; and to establish goals to facilitate uniformity and standardization of training requirements. Training could include general and task- and context-specific topics, preparing personnel for performance under the specific contract and in the specific environment, such as:
 - a) rules on the use of force and weapons;
 - b) international humanitarian law and human rights law;
 - c) religious, gender, and cultural issues, and respect for the local population;
 - d) complaints handling;
 - e) measures against bribery, corruption, and other crimes.

Territorial States consider continuously reassessing the level of training by, for example, requiring regular reporting on the part of PMSCs.

36. Not to grant an authorization to a PMSC whose weapons are acquired unlawfully or whose use is prohibited by international law.

37. To take into account the PMSC's internal organization and regulations, such as:
 - a) the existence and implementation of policies relating to international humanitarian law and human rights law, especially on the use of force and firearms, as well as policies against bribery and corruption;
 - b) the existence of monitoring and supervisory measures as well as internal accountability mechanisms, such as:

- i. internal investigation and disciplinary arrangements in case of allegations of wrongdoing by its personnel;
- ii. mechanisms enabling persons affected by the conduct of the personnel of the PMSC to lodge a complaint, including both third party complaints mechanisms and whistleblower protection arrangements;
- iii. regular reporting on the performance of the assignment and/or specific incident reporting;
- iv. requiring PMSC personnel and its subcontracted personnel to report any misconduct to the PMSC's management or a competent authority.

38. To consider the respect of the PMSC for the welfare of its personnel.

39. To take into account, in considering whether to grant a license or to register an individual, good practices 32 (past conduct) and 35 (training).

V. Terms of authorization

40. To include clauses to ensure that the conduct of the PMSC and its personnel is continuously in conformity with relevant national law, international humanitarian law and international human rights law. The authorization includes, where appropriate, clauses requiring the PMSC and its personnel to implement the quality criteria referred to above as criteria for granting general and/or specific operating licenses and relating to:
 - a) past conduct (good practice 32);
 - b) financial and economic capacity (good practice 33);
 - c) personnel and property records (good practice 34);
 - d) training (good practice 35);
 - e) lawful acquisitions (good practice 36);
 - f) internal organization and regulation and accountability (good practice 37);
 - g) welfare of personnel (good practice 38);

41. To require the PMSC to post a bond that would be forfeited in case of misconduct or non-compliance with the authorization, provided that the PMSC has a fair opportunity to rebut allegations and address problems.

42. To determine, when granting a specific operating license, a maximum number of PMSC personnel and equipment understood to be necessary to provide the services.

VI. Rules on the provision of services by PMSCs and their personnel

43. To have in place appropriate rules on the use of force and firearms by PMSCs and their personnel, such as:
 - a) using force and firearms only when necessary in self-defence or defence of third persons;
 - b) immediately reporting to and cooperation with competent authorities in the case of use of force and firearms.

44. To have in place appropriate rules on the possession of weapons by PMSCs and their personnel, such as:
 - a) limiting the types and quantity of weapons and ammunition that a PMSC may import, possess or acquire;
 - b) requiring the registration of weapons, including their serial number and calibre, and ammunition, with a competent authority;
 - c) requiring PMSC personnel to obtain an authorization to carry weapons that is shown upon demand;
 - d) limiting the number of employees allowed to carry weapons in a specific context or area;
 - e) requiring the storage of weapons and ammunition in a secure and safe facility when personnel are off duty;
 - f) requiring that PMSC personnel carry authorized weapons only while on duty;

g) controlling the further possession and use of weapons and ammunition after an assignment is completed, including return to point of origin or other proper disposal of weapons and ammunition.

45. To require, if consistent with force protection requirements and safety of the assigned mission, that the personnel of the PMSC be personally identifiable whenever they are carrying out activities in discharge of their responsibilities under a contract. Identification should:

- a) be visible from a distance where mission and context allow, or consist of a non-transferable identification card that is shown upon demand;
- b) allow for a clear distinction between a PMSC's personnel and the public authorities in the State where the PMSC operates.

The same should apply to all means of transportation used by PMSCs.

VII. Monitoring compliance and ensuring accountability

46. To monitor compliance with the terms of the authorization, in particular:

- a) establish or designate an adequately resourced monitoring authority;
- b) ensure that the civilian population is informed about the rules of conduct by which PMSC have to abide and available complaint mechanisms;
- c) requesting local authorities to report on misconduct by PMSCs or their personnel;
- d) investigate reports of wrongdoing.

47. To provide a fair opportunity for PMSCs to respond to allegations that they have operated without or in violation of an authorization.

48. To impose administrative measures, if it is determined that a PMSC has operated without or in violation of an authorization; such measures may include:

- a) revocation or suspension of the authorization or putting the PMSC on notice of either of these steps in case remedial measures are not taken within a set period of time;
- b) removing specific PMSC personnel under the penalty of revoking or suspending the authorization;
- c) prohibition to re-apply for an authorization in the future or for a set period of time;
- d) forfeiture of bonds or securities;
- e) financial penalties.

49. To provide for criminal jurisdiction in their national legislation over crimes under international law and their national law committed by PMSCs and their personnel and, in addition, to consider establishing corporate criminal responsibility for crimes committed by the PMSC, consistent with the Territorial State's national legal system.

50. To provide for non-criminal accountability mechanisms for improper and unlawful conduct of PMSC and its personnel, including:

- a) providing for civil liability;
- b) otherwise requiring PMSCs, or their clients, to provide reparation to those harmed by the misconduct of PMSCs and their personnel.

51. When negotiating agreements with Contracting States which contain rules affecting the legal status of and jurisdiction over PMSCs and their personnel:

- a) to consider the impact of the agreements on the compliance with national laws and regulations;
- b) to address the issue of jurisdiction and immunities to ascertain proper coverage and appropriate civil, criminal, and administrative remedies for misconduct, in order to ensure accountability of PMSCs and their personnel.

52. To cooperate with investigating and regulatory authorities of Contracting and Home States in matters of common concern regarding PMSCs.

C. Good practices for Home States

The following good practices aim to provide guidance to Home States for governing the supply of military and security services by PMSCs and their personnel abroad ("export"). It is recognized that other good practices for regulation – such as regulation of standards through trade associations and through international cooperation – will also provide guidance for regulating PMSCs, but have not been elaborated here.

In this understanding, Home States should evaluate whether their domestic legal framework, be it central or federal, is adequately conducive to respect for relevant international humanitarian law and human rights law by PMSCs and their personnel, or whether, given the size and nature of their national private military and security industry, additional measures should be adopted to encourage such respect and to regulate the activities of PMSCs. When considering the scope and nature of any licensing or regulatory regime, Home States should take particular notice of regulatory regimes by relevant Contracting and Territorial States, in order to minimize the potential for duplicative or overlapping regimes and to focus efforts on areas of specific concern for Home States.

In this sense, good practices for Home States include the following:

I. Determination of services

53. To determine which services of PMSCs may or may not be exported; in determining which services may not be exported, Home States take into account factors such as whether a particular service could cause PMSC personnel to become involved in direct participation in hostilities.

II. Establishment of an authorization system

54. To consider establishing an authorization system for the provision of military and security services abroad through appropriate means, such as requiring an operating license valid for a limited and renewable period ("corporate operating license"), for specific services ("specific operating license"), or through other forms of authorization ("export authorization"). If such a system of authorization is established, the good practices 57 to 67 set out the procedure, quality criteria and terms that may be included in such a system.

55. To have in place appropriate rules on the accountability, export, and return of weapons and ammunition by PMSCs.

56. To harmonize their authorization system and decisions with those of other States and taking into account regional approaches relating to authorization systems.

III. Procedure with regard to authorizations

57. To assess the capacity of the PMSC to carry out its activities in respect of relevant national law, international humanitarian law and international human rights law, taking into account the inherent risk associated with the services to be performed, for instance by:

- a) acquiring information relating to the principal services the PMSC has provided in the past;
- b) obtaining references from clients for whom the PMSC has previously provided similar services or clients in the Territorial State;
- c) acquiring information relating to the PMSC's ownership structure and conduct background checks on the PMSC and its personnel, taking into account relations with subcontractors, subsidiary corporations and ventures.

58. To allocate adequate resources and trained personnel to handle authorizations properly and timely.

59. To ensure transparency with regard to the authorization procedure. Relevant mechanisms may include:

- a) public disclosure of authorization regulations and procedures;
- b) public disclosure of general information on specific authorizations, if necessary redacted to address national security, privacy and commercial confidentiality requirements;
- c) oversight by parliamentary bodies, including through annual reports or notification of particular contracts to such bodies;
- d) publishing and adhering to fair and non-discriminatory fee schedules.

IV. Criteria for granting an authorization

60. To take into account the past conduct of the PMSC and its personnel, which include ensuring that the PMSC has:
- a) no reliably attested record of involvement in serious crime (including organized crime, violent crime, sexual offences, violations of international humanitarian law, bribery and corruption) and, insofar as the PMSC or its personnel had engaged in past unlawful conduct, has appropriately dealt with such conduct, including by effectively cooperating with official authorities, taking disciplinary measures against those involved, and where appropriate and consistent with findings of wrongdoing, providing individuals injured by their conduct with appropriate reparation;
 - b) conducted comprehensive inquiries within applicable law regarding the extent to which its personnel, particularly those who are required to carry weapons as part of their duties, have a reliably attested record of not having been involved in serious crime or have not been dishonourably discharged from armed or security forces;
 - c) not previously had an authorization revoked for misconduct of the PMSC or its personnel.

61. To take into account the financial and economic capacity of the PMSC, including for liabilities that it may incur.

62. To take into account whether the PMSC maintains accurate and up-to-date personnel and property records, in particular, with regard to weapons and ammunition, available for inspection on demand by competent authorities.

63. To take into account that the PMSC's personnel are sufficiently trained, both prior to any deployment and on an ongoing basis, to respect relevant national law, international humanitarian law and human rights law; and to establish goals to facilitate uniformity and standardization of training requirements. Training could include general and task- and context-specific topics, preparing personnel for performance under the specific contract and in the specific environment, such as:
- a) rules on the use of force and firearms;
 - b) international humanitarian law and human rights law;
 - c) religious, gender, and cultural issues, and respect for the local population;
 - d) complaints handling;
 - e) measures against bribery, corruption and other crimes.

Home States consider continuously reassessing the level of training by, for example, requiring regular reporting on the part of PMSCs.

64. To take into account whether the PMSC's equipment, in particular its weapons, is acquired lawfully and its use is not prohibited by international law.

65. To take into account the PMSC's internal organization and regulations, such as:

- a) the existence and implementation of policies relating to international humanitarian law and human rights law;
- b) the existence of monitoring and supervisory as well as internal accountability mechanisms, such as:
 - i. internal investigation and disciplinary arrangements in case of allegations of wrongdoing by its personnel;

- ii. mechanisms enabling persons affected by the conduct of the personnel of the PMSC to lodge a complaint, including both third party complaints mechanisms and whistleblower protection arrangements.

66. To consider the respect of the PMSC for the welfare of its personnel as protected by labour law and other relevant national law.

V. Terms of authorization granted to PMSCs

67. To include clauses to ensure that the conduct of the PMSC and its personnel respect relevant national law, international humanitarian law and international human rights law. Such clauses, reflecting and implementing the quality criteria referred to above as criteria for granting authorizations, may include:
- a) past conduct (good practice 60);
 - b) financial and economic capacity (good practice 61);
 - c) personnel and property records (good practice 62);
 - d) training (good practice 62);
 - e) lawful acquisitions (good practice 64);
 - f) internal organization and regulation and accountability (good practice 65);
 - g) welfare of personnel (good practice 66).

VI. Monitoring compliance and ensuring accountability

68. To monitor compliance with the terms of the authorization, in particular by establishing close links between its authorities granting authorizations and its representatives abroad and/or with the authorities of the Contracting or Territorial State.

69. To impose sanctions for PMSCs operating without or in violation of an authorization, such as:
- a) revocation or suspension of the authorization or putting the PMSC on notice of either of these steps in case remedial measures are not taken within a set period of time;
 - b) prohibition to re-apply for an authorization in the future or for a set period of time;
 - c) civil and criminal fines and penalties.

70. To support Territorial States in their efforts to establish effective monitoring over PMSCs.

71. To provide for criminal jurisdiction in their national legislation over crimes under international law and their national law committed by PMSCs and their personnel and, in addition, consider establishing:

- a) corporate criminal responsibility for crimes committed by the PMSC, consistent with the Home State's national legal system;
- b) criminal jurisdiction over serious crimes committed by PMSC personnel abroad.

72. To provide for non-criminal accountability mechanisms for improper and unlawful conduct of PMSCs and their personnel, including:

- a) providing for civil liability;
- b) otherwise requiring PMSCs to provide reparation to those harmed by the misconduct of PMSCs and their personnel.

73. To cooperate with investigating or regulatory authorities of Contracting and Territorial States, as appropriate, in matters of common concern regarding PMSCs.

**Interpretive Guidance on the Notion of Direct Participation in
Hostilities under International Humanitarian Law,
International Committee of the Red Cross, 2009**

INTERPRETIVE GUIDANCE ON THE NOTION OF

DIRECT PARTICIPATION IN HOSTILITIES

UNDER INTERNATIONAL HUMANITARIAN LAW

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FOREWORD

The protection of civilians is one of the main goals of international humanitarian law. Pursuant to its rules on the conduct of hostilities, the civilian population and individual civilians enjoy general protection against the effects of hostilities. Accordingly, the law obliges the parties to an armed conflict to distinguish, at all times, between the civilian population and combatants and to direct operations only against military targets. It also provides that civilians may not be the object of deliberate attack. In the same vein, humanitarian law mandates that civilians must be humanely treated if and when they find themselves in the hands of the enemy. This overarching norm finds expression in many provisions of humanitarian law, including those prohibiting any form of violence to life, as well as torture or cruel, inhuman or degrading treatment.

Unusual as it may seem today, the comprehensive protection of civilians was not always a main focus of international humanitarian law. Its origins, at least in terms of treaty rules, lie at a time when civilian populations were largely spared from the direct effects of hostilities and actual fighting was carried out only by combatants. In 1864, when the first Geneva Convention was adopted, armies faced off on battlefields with clearly drawn frontlines. It was the suffering of soldiers, often tens of thousands of them who lay wounded or dying after a military engagement, that needed to be alleviated. Only later, when technological innovations in weaponry started causing massive civilian suffering and casualties in war, did the protection of civilians also need to be addressed.

Over time, and particularly after the Second World War, the law also had to regulate the consequences of more and more frequent direct participation by civilians in hostilities. Two situations were emblematic: first, wars of national liberation in which government forces faced off against “irregular” armed formations fighting for the freedom of colonized populations. In 1977, Additional Protocol I recognized that such wars could under certain circumstances be deemed international in character. A second situation has become prevalent and remains of great concern today: armed

conflicts not of an international character waged between government forces and organized non-State armed groups, or between such groups, for political, economic, or other reasons. It hardly needs to be said that these types of conflict, in which parts of the civilian population are effectively transformed into fighting forces, and in which civilians are also the main victims, continue to cause untold loss of life, injury and destruction.

International humanitarian law has addressed the trend towards increased civilian participation in hostilities by providing a basic rule, found in both Additional Protocols to the Geneva Conventions, pursuant to which civilians benefit from protection against direct attack “unless and for such time as they take a direct part in hostilities”. It is the meaning of this notion – direct participation in hostilities – that the present Interpretive Guidance seeks to explain. In examining the notion of direct participation in hostilities the ICRC not only had to face longstanding dilemmas that had surrounded its practical application (e.g., can a person be a protected farmer by day and a targetable fighter at night?), but also had to grapple with more recent trends that further underlined the need for clarity. One such trend has been a marked shift in the conduct of hostilities into civilian population centres, including cases of urban warfare, characterized by an unprecedented intermingling of civilians and armed actors. Another has been the increased outsourcing of previously traditional military functions to a range of civilian personnel such as private contractors or civilian government employees, which has made distinguishing between those who enjoy protection from direct attack and those who do not ever more difficult. A third, particularly worrying trend has been the failure of persons directly participating in hostilities, whether civilians or members of armed forces or groups, to adequately distinguish themselves from the civilian population.

The Interpretive Guidance provides a legal reading of the notion of “direct participation in hostilities” with a view to strengthening the implementation of the principle of distinction. In order for the prohibition

of directing attacks against civilians to be fully observed, it is necessary that the armed forces of parties to an armed conflict – whether international or non-international – be distinguished from civilians, and that civilians who never take a direct part in hostilities be distinguished from those who do so on an individual, sporadic or unorganized basis only. The present text seeks to facilitate these distinctions by providing guidance on the interpretation of international humanitarian law relating to the notion of direct participation in hostilities. In so doing, it examines three questions: who is considered a civilian for the purposes of the principle of distinction, what conduct amounts to direct participation in hostilities and what modalities govern the loss of protection against direct attack.

The responses provided and the resulting interpretations included in the Interpretive Guidance tackle one of the most difficult, but as yet unresolved issues of international humanitarian law. The ICRC initiated reflection on the notion of direct participation in hostilities based both on the need to enhance the protection of civilians in practice for humanitarian reasons and on the international mandate it has been given to work for the better understanding and faithful application of international humanitarian law. In this context, it is appropriate that three observations be made: First, the Interpretive Guidance is an expression solely of the ICRC's views. While international humanitarian law relating to the notion of direct participation in hostilities was examined over several years with a group of eminent legal experts, to whom the ICRC owes a huge debt of gratitude, the positions enunciated are the ICRC's alone. Second, while reflecting the ICRC's views, the Interpretive Guidance is not and cannot be a text of a legally binding nature. Only State agreements (treaties) or State practice followed out of a sense of legal obligation on a certain issue (custom) can produce binding law. Third, the Guidance does not purport to change the law, but provides an interpretation of the notion of direct participation in hostilities within existing legal parameters.

The present text interprets the notion of direct participation in hostilities for the purposes of the conduct of hostilities only. Thus, apart from providing guidance on when and for how long a person is considered to have lost protection from direct attack, it does not address the consequences of direct participation in hostilities once he or she finds himself or herself in the adversary's hands. Other rules of international humanitarian law then govern, foremost among them being the already mentioned principle of humane treatment.

Unfortunately, there seems to be little reason to believe that the current trend towards increased civilian participation in hostilities will weaken over time. Today, more than ever, it is of the utmost importance that all feasible measures be taken to prevent the exposure of the civilian population to erroneous or arbitrary targeting based, among other things, on reliable guidance as to how to the principle of distinction should be implemented in the challenging and complex circumstances of contemporary warfare. By presenting this Interpretive Guidance, the ICRC hopes to make a contribution to ensuring that those who do not take a direct part in hostilities receive the humanitarian protection that they are entitled to under international humanitarian law.

Dr. Jakob Kellenberger
President of the International Committee of the Red Cross

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*International Committee of the Red Cross
February 2009*

INTRODUCTION

I. PURPOSE AND NATURE OF THE INTERPRETIVE GUIDANCE

The purpose of the Interpretive Guidance is to provide recommendations concerning the interpretation of international humanitarian law (IHL) as far as it relates to the notion of direct participation in hostilities. Accordingly, **the 10 recommendations made by the Interpretive Guidance, as well as the accompanying commentary, do not endeavour to change binding rules of customary or treaty IHL, but reflect the ICRC's institutional position as to how existing IHL should be interpreted** in light of the circumstances prevailing in contemporary armed conflicts.

The Interpretive Guidance draws on a variety of sources including, first and foremost, the rules and principles of customary and treaty IHL and, where necessary, the *travaux préparatoires* of treaties, international jurisprudence, military manuals, and standard works of legal doctrine. Additionally, it draws on the wealth of materials produced in the course of an expert process, jointly initiated by the ICRC and the TMC Asser Institute with the aim of clarifying the notion of direct participation in hostilities under IHL.¹ Five informal expert meetings were conducted from 2003 to 2008 in The Hague and Geneva, each bringing together 40 to 50 legal experts from academic, military, governmental, and non-governmental circles, all of whom participated in their private capacity.²

The Interpretive Guidance is widely informed by the discussions held during these expert meetings but does not necessarily reflect a unanimous view or majority opinion of the experts. It endeavours to propose a balanced and practical solution that takes into account the wide variety

¹ All materials produced in the course of the expert process, such as reports, background documents etc., will be available at: www.icrc.org.

² For more information on the expert process, see the document *Overview of the ICRC's Expert Process (2003-2008)*.

of concerns involved and, at the same time, ensures a clear and coherent interpretation of the law consistent with the purposes and principles of IHL. **Ultimately, the responsibility for the Interpretive Guidance is assumed by the ICRC as a neutral and independent humanitarian organization mandated by the international community of States to promote and work for a better understanding of IHL.**³ Although a legally binding interpretation of IHL can only be formulated by a competent judicial organ or, collectively, by the States themselves, the ICRC hopes that the comprehensive legal analysis and the careful balance of humanitarian and military interests underlying the Interpretive Guidance will render the resulting recommendations persuasive for States, non-State actors, practitioners, and academics alike.

The Interpretive Guidance consists of 10 recommendations, each of which summarizes the ICRC's position on the interpretation of IHL on a particular legal question, and a commentary explaining the bases of each recommendation. Throughout the text, particularly where major divergences of opinion persisted among the experts, footnotes refer to the passages of the expert meeting reports and background documents where the relevant discussions were recorded. **The sections and recommendations of the Interpretive Guidance are closely interrelated and can only be properly understood if read as a whole.** Likewise, the examples offered throughout the Interpretive Guidance are not absolute statements on the legal qualification of a particular situation or conduct, but must be read in good faith, within the precise context in which they are mentioned and in accordance with generally recognized rules and principles of IHL. They can only illustrate the principles based on which the relevant distinctions ought to be made, but cannot replace a careful assessment of the concrete circumstances prevailing at the relevant time and place.

Lastly, it should be emphasized that the Interpretive Guidance **examines the concept of direct participation in hostilities only for the purposes of the conduct of hostilities.** Its conclusions are not intended to serve as a basis for interpreting IHL regulating the status, rights and protections of persons outside the conduct of hostilities, such as those deprived of their liberty. Moreover, although the Interpretive Guidance is concerned with IHL only, **its conclusions remain without prejudice to an analysis of questions related to direct participation in hostilities under other applicable branches of international law, such as human rights law or the law governing the use of interstate force (*jus ad bellum*).**

2. THE ISSUE OF CIVILIAN PARTICIPATION IN HOSTILITIES

The primary aim of IHL is to protect the victims of armed conflict and to regulate the conduct of hostilities based on a balance between military necessity and humanity. At the heart of IHL lies the principle of distinction between the armed forces, who conduct the hostilities on behalf of the parties to an armed conflict, and civilians, who are presumed not to directly participate in hostilities and must be protected against the dangers arising from military operations. Throughout history, the civilian population has always contributed to the general war effort of parties to armed conflicts, for example through the production and supply of weapons, equipment, food, and shelter, or through economic, administrative, and political support. However, such activities typically remained distant from the battlefield and, traditionally, only a small minority of civilians became involved in the conduct of military operations.

Recent decades have seen this pattern change significantly. A continuous shift of the conduct of hostilities into civilian population centres has led to an increased intermingling of civilians with armed actors and has facilitated their involvement in activities more closely related to military operations. Even more recently, the increased outsourcing of traditionally military functions has inserted numerous private contractors, civilian intelligence personnel, and other civilian government employees into the reality of modern armed conflict. Moreover, military operations have often

³ See, e.g., Art. 5 [2] (c) and (g) Statutes of the International Red Cross and Red Crescent Movement.

attained an unprecedented level of complexity, involving the coordination of a great variety of interdependent human and technical resources in different locations.

All of these aspects of contemporary warfare have given rise to confusion and uncertainty as to the distinction between legitimate military targets and persons protected against direct attacks. These difficulties are aggravated where armed actors do not distinguish themselves from the civilian population, for example during undercover military operations or when acting as farmers by day and fighters by night. As a result, civilians are more likely to fall victim to erroneous or arbitrary targeting, while armed forces – unable to properly identify their adversary – run an increased risk of being attacked by persons they cannot distinguish from the civilian population.

3. KEY LEGAL QUESTIONS

This trend underlines the importance of distinguishing not only between civilians and the armed forces, but also between civilians who do and, respectively, do not take a direct part in hostilities. Under IHL, the concept of direct participation in hostilities refers to conduct which, if carried out by civilians, suspends their protection against the dangers arising from military operations.⁴ Most notably, for the duration of their direct participation in hostilities, civilians may be directly attacked as if they were combatants. Derived from Article 3 common to the Geneva Conventions, the notion of taking a direct or active part in hostilities is found in many provisions of IHL. However, despite the serious legal consequences involved, neither the Conventions nor their Additional Protocols provide a definition of direct participation in hostilities. This situation calls for the clarification of three questions under IHL applicable in both international and non-international armed conflict:

- *Who is considered a civilian for the purposes of the principle of distinction?*
The answer to this question determines the circle of persons who are protected against direct attack unless and for such time as they directly participate in hostilities.⁵
- *What conduct amounts to direct participation in hostilities?*
The answer to this question determines the individual conduct that leads to the suspension of a civilian's protection against direct attack.⁶
- *What modalities govern the loss of protection against direct attack?*
The answer to this question will elucidate issues such as the duration of the loss of protection against direct attack, the precautions and presumptions in situations of doubt, the rules and principles governing the use of force against legitimate military targets, and the consequences of regaining protection against direct attack.

⁵ The status, rights, and protections of persons outside the conduct of hostilities does not depend on their qualification as civilians but on the precise personal scope of application of the provisions conferring the relevant status, rights, and protections (e.g., Arts 4 GC III, 4 GC IV, 3 GC I-IV, 75 AP I, and 4 to 6 AP II).

⁶ For the sake of simplicity, when discussing the consequences of civilian direct participation in hostilities, the Interpretive Guidance will generally refer to loss of protection against "direct attacks". Unless stated otherwise, this terminology includes also the suspension of civilian protection against other "dangers arising from military operations" (Arts 51 [1], [3] AP I and 13 [1], [3] AP II). This entails, for example, that civilians directly participating in hostilities may not only be directly attacked themselves, but also do not have to be taken into account in the proportionality assessment when military objectives in their proximity are attacked.

⁴ For the purposes of this Interpretive Guidance, the phrases "direct participation in hostilities", "taking a direct part in hostilities" and "directly participating in hostilities" will be used synonymously.

Part 1: RECOMMENDATIONS OF THE ICRC

concerning the interpretation
of international humanitarian law
relating to the notion of direct
participation in hostilities

I. THE CONCEPT OF CIVILIAN IN INTERNATIONAL ARMED CONFLICT

For the purposes of the principle of distinction in international armed conflict, all persons who are neither members of the armed forces of a party to the conflict nor participants in a *levée en masse* are civilians and, therefore, entitled to protection against direct attack unless and for such time as they take a direct part in hostilities.

II. THE CONCEPT OF CIVILIAN IN NON-INTERNATIONAL ARMED CONFLICT

For the purposes of the principle of distinction in non-international armed conflict, all persons who are not members of State armed forces or organized armed groups of a party to the conflict are civilians and, therefore, entitled to protection against direct attack unless and for such time as they take a direct part in hostilities. In non-international armed conflict, organized armed groups constitute the armed forces of a non-State party to the conflict and consist only of individuals whose continuous function it is to take a direct part in hostilities (“continuous combat function”).

III. PRIVATE CONTRACTORS AND CIVILIAN EMPLOYEES

Private contractors and employees of a party to an armed conflict who are civilians (see above I and II) are entitled to protection against direct attack unless and for such time as they take a direct part in hostilities. Their activities or location may, however, expose them to an increased risk of incidental death or injury even if they do not take a direct part in hostilities.

IV. DIRECT PARTICIPATION IN HOSTILITIES AS A SPECIFIC ACT

The notion of direct participation in hostilities refers to specific acts carried out by individuals as part of the conduct of hostilities between parties to an armed conflict.

V. CONSTITUTIVE ELEMENTS OF DIRECT PARTICIPATION IN HOSTILITIES

In order to qualify as direct participation in hostilities, a specific act must meet the following cumulative criteria:

1. The act must be likely to adversely affect the military operations or military capacity of a party to an armed conflict or, alternatively, to inflict death, injury, or destruction on persons or objects protected against direct attack (threshold of harm), and there must be a direct causal link between the act and the harm likely to result either from that act, or from a coordinated military operation of which that act constitutes an integral part (direct causation), and
2. the act must be specifically designed to directly cause the required threshold of harm in support of a party to the conflict and to the detriment of another (belligerent nexus).
- 3.

**VI. BEGINNING AND END OF DIRECT PARTICIPATION
IN HOSTILITIES**

Measures preparatory to the execution of a specific act of direct participation in hostilities, as well as the deployment to and the return from the location of its execution, constitute an integral part of that act.

VII. TEMPORAL SCOPE OF THE LOSS OF PROTECTION

Civilians lose protection against direct attack for the duration of each specific act amounting to direct participation in hostilities, whereas members of organized armed groups belonging to a non-State party to an armed conflict cease to be civilians (see above II), and lose protection against direct attack, for as long as they assume their continuous combat function.

**VIII. PRECAUTIONS AND PRESUMPTIONS
IN SITUATIONS OF DOUBT**

All feasible precautions must be taken in determining whether a person is a civilian and, if so, whether that civilian is directly participating in hostilities. In case of doubt, the person must be presumed to be protected against direct attack.

IX. RESTRAINTS ON THE USE OF FORCE IN DIRECT ATTACK

In addition to the restraints imposed by international humanitarian law on specific means and methods of warfare, and without prejudice to further restrictions that may arise under other applicable branches of international law, the kind and degree of force which is permissible against persons not entitled to protection against direct attack must not exceed what is actually necessary to accomplish a legitimate military purpose in the prevailing circumstances.

X. CONSEQUENCES OF REGAINING CIVILIAN PROTECTION

International humanitarian law neither prohibits nor privileges civilian direct participation in hostilities. When civilians cease to directly participate in hostilities, or when members of organized armed groups belonging to a non-State party to an armed conflict cease to assume their continuous combat function, they regain full civilian protection against direct attack, but are not exempted from prosecution for violations of domestic and international law they may have committed.

**Part 2:
RECOMMENDATIONS
AND COMMENTARY**

A. THE CONCEPT OF CIVILIAN

For the purposes of the principle of distinction, the definition of civilian refers to those persons who enjoy immunity from direct attack unless and for such time as they take a direct part in hostilities.⁷ Where IHL provides persons other than civilians with immunity from direct attack, the loss and restoration of protection is governed by criteria similar to, but not necessarily identical with, direct participation in hostilities.⁸ Before interpreting the notion of direct participation in hostilities itself, it will therefore be necessary to clarify the concept of civilian under IHL applicable in international and non-international armed conflict.

I. THE CONCEPT OF CIVILIAN IN INTERNATIONAL ARMED CONFLICT

For the purposes of the principle of distinction in international armed conflict, all persons who are neither members of the armed forces of a party to the conflict nor participants in a *levée en masse* are civilians and, therefore, entitled to protection against direct attack unless and for such time as they take a direct part in hostilities.

1. MUTUAL EXCLUSIVENESS OF THE CONCEPTS OF CIVILIAN, ARMED FORCES AND *LEVÉE EN MASSE*

According to Additional Protocol I (AP I),⁹ in situations of international armed conflict, civilians are defined negatively as all persons who are neither members of the armed forces of a party to the conflict nor

participants in a *levée en masse*.¹⁰ While treaty IHL predating Additional Protocol I does not expressly define civilians, the terminology used in the Hague Regulations (H IV R) and the four Geneva Conventions (GC I-IV) nevertheless suggests that the concepts of civilian, of armed forces, and of *levée en masse* are mutually exclusive, and that every person involved in, or affected by, the conduct of hostilities falls into one of these three categories.¹¹ In other words, under all instruments governing international armed conflict, the concept of civilian is negatively delimited by the definitions of armed forces and of *levée en masse*,¹² both of which shall in the following be more closely examined.

2. ARMED FORCES

a) Basic concept

According to Additional Protocol I, the armed forces of a party to the conflict comprise all organized armed forces, groups and units which are under a command responsible to that party for the conduct of its subordinates.¹³ At first glance, this broad and functional concept of armed forces seems wider than that underlying the Hague Regulations and the Geneva Conventions. Although these treaties do not expressly define

¹⁰ Art. 50 [1] AP I. According to Customary IHL, above N 7, Vol. I, Rule 5, this definition of civilian reflects customary IHL in international armed conflict. The categories covered by Art. 4 A [1], [2] and [3] GC III are included in the general definition of armed forces in Art. 43 [1] AP I. See also Sandoz et al. (eds.), Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949 (Geneva: ICRC, 1987), §§ 1916 f. [hereafter: Commentary AP].

¹¹ For example, Art. 22 [2] of the Brussels Declaration (1874) and Art. 29 H IV R (1907) refer to “civilians” in contradistinction to “soldiers”. Similarly, as their titles suggest, the Geneva Conventions (1949) use the generic category of “civilian persons” (GC IV) as complementary to members of the “armed forces” (GC I and GC II). Even though the scope of application of each convention does not exactly correspond to the generic categories mentioned in their respective titles, the categories of “civilian” and “armed forces” are clearly used as mutually exclusive in all four conventions. For example, GC I, GC II and GC IV refer to “civilian” wounded, sick and shipwrecked (Art. 22 [5] GC I; Art. 35 [4] GC II; Art. 20, 21, 22 GC IV) as opposed to the generic categories protected by GC I and GC II, namely the wounded, sick and shipwrecked of the “armed forces” (titles GC I and GC II). Similarly, Art. 57 GC IV refers to “military” wounded and sick as opposed to the generic category protected by GC IV, namely “civilian persons”. Other provisions of the conventions also use the term “civilian” as opposed to “military” (Art. 30 [2] GC III: “military or civilian medical unit”; Art. 32 GC IV: “civilian or military agents”; Art. 144 [1] GC IV: “military and civil instruction”; Art. 93 [2] GC III: “civilian clothing”, presumably as opposed to military uniform; Arts 18, 19, 20, 57 GC IV: “civilian hospitals”, presumably as opposed to military hospitals; Art. 144 [2] GC IV: “civilian, military, police or other authorities”) or to “combatants and non-combatants” (Art. 15 GC IV). None of these instruments suggests the existence of additional categories of persons who would qualify neither as civilians, nor as members of the armed forces or as participants in a *levée en masse*.

¹² Affirmative also *Commentary AP* (above N 10), § 1914. The International Criminal Tribunal for the former Yugoslavia (ICTY) defined the concept of civilians for situations of international armed conflict as “persons who are not, or no longer, members of the armed forces” (ICTY, *Prosecutor v. Blaskić*, Case No. IT-95-14-T, Judgment of 3 March 2000, § 180). For the relevant discussion during the expert meetings see: Report DPH 2005, pp. 43 f., 58, 74; Report DPH 2006, pp. 10, 12 ff., 19 ff.; Report DPH 2008, pp. 35, 37.

¹³ Art. 43 [1] AP I; *Customary IHL*, above N 7, Vol. I, Rule 4.

⁷ Arts 51 [3] AP I; 13 [3] AP II. See also Henckaerts/Doswald-Beck, *Customary International Humanitarian Law*, Volume I: Rules (Cambridge: University Press, 2005), Rule 6 [hereafter: Customary IHL]. Regarding the terminology of “loss of protection against direct attacks” used in the Interpretive Guidance see above N 6. For example, medical and religious personnel of the armed forces lose their protection in case of “hostile” or “harmful” acts outside their privileged function (Arts 21 GC I, 11 [2] AP II; Customary IHL, above N 7, Vol. I, Rule 25). Combatants *hors de combat* lose their protection if they commit a “hostile act” or “attempt to escape” (Art. 41 [2] AP I).

⁹ As of 1 November 2008, 168 States were party to AP I. At the same time, the ratification of GC I-IV was virtually universal (194 States party).

armed forces, they require that members of militias and volunteer corps other than the regular armed forces recognized as such in domestic law fulfil four requirements: (a) responsible command; (b) fixed distinctive sign recognizable at a distance; (c) carrying arms openly; and (d) operating in accordance with the laws and customs of war.¹⁴ Strictly speaking, however, these requirements constitute conditions for the post-capture entitlement of irregular armed forces to combatant privilege and prisoner-of-war status and are not constitutive elements of the armed forces of a party to a conflict.

Thus, while members of irregular armed forces failing to fulfil the four requirements may not be entitled to combatant privilege and prisoner-of-war status after capture,¹⁵ it does not follow that any such person must necessarily be excluded from the category of armed forces and regarded as a civilian for the purposes of the conduct of hostilities.¹⁶ On the contrary, it would contradict the logic of the principle of distinction to place irregular armed forces under the more protective legal regime afforded to the civilian population merely because they fail to distinguish themselves from that population, to carry their arms openly, or to conduct their operations in accordance with the laws and customs of war. Therefore, even under the terms of the Hague Regulations and the Geneva Conventions, all armed actors showing a sufficient degree of military organization and belonging to a party to the conflict must be regarded as part of the armed forces of that party.¹⁷

b) Meaning and significance of “belonging to” a party to the conflict
 In order for organized armed groups to qualify as armed forces under IHL, they must belong to a party to the conflict. While this requirement is made textually explicit only for irregular militias and volunteer corps, including organized resistance movements,¹⁸ it is implied wherever the treaties refer to the armed forces “of” a party to the conflict.¹⁹ The concept of “belonging to” requires at least a *de facto* relationship between an organized armed group and a party to the conflict. This relationship may be officially declared, but may also be expressed through tacit agreement or conclusive behaviour that makes clear for which party the group is fighting.²⁰ Without any doubt, an organized armed group can be said to belong to a State if its conduct is attributable to that State under the international law of State responsibility.²¹ The degree of control required to make a State responsible for the conduct of an organized armed group is not settled in international law.²² In practice, in order for an organized armed group to belong to a party to the conflict, it appears essential that it conduct hostilities on behalf and with the agreement of that party.²³

Groups engaging in organized armed violence against a party to an international armed conflict without belonging to another party to the same conflict cannot be regarded as members of the armed forces of a party to that conflict, whether under Additional Protocol I, the Hague Regulations, or the Geneva Conventions. They are thus civilians under those three instruments.²⁴ Any other view would discard the dichotomy

18 See Arts 13 [2] GC I and GC II and Art. 4 A [2] GC III.

19 See, e.g., Art. 3 HIV R; Art. 4 A [1] GC III; Art. 43 AP I.

20 Pietet (ed), *Commentary on the Third Geneva Convention Relative to the Treatment of Prisoners of War* (Geneva: ICRC, 1960), p. 57 [hereafter: *Commentary GC III*].

21 See also Report DPH 2006, p. 16.

22 For the basic positions in this respect, see, most notably, ICJ, *Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America)*, Judgment of 27 June 1986 (Merits), § 115; ICTY, *Prosecutor v. Tadić*, Case No. IT-94-A, Judgment of 15 July 1999 (Appeals Chamber), § 145; ICJ, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment of 27 February 2007, § 413; ILC, Report to the General Assembly on the work of its 53rd session (2001), UN Doc. A/56/10, Draft Article 8, Commentary § 5.

23 See also below N 26.

24 This was the prevailing opinion during the expert meetings (Report DPH 2006, pp. 16 ff; Report DPH 2008, pp. 43 f.). For recent national case law reflecting this position see: Israeli High Court of Justice, *The Public Committee Against Torture et al. v. The Government of Israel et al.*, (HCJ 769/02), Judgment of 13 December 2006, § 26, where the Court held that, under IHL, governing international armed conflict, independent Palestinian armed groups operating in a context of belligerent occupation necessarily qualified as civilians. With regard to the temporal scope of loss of protection for members of such groups, the Court nevertheless concluded that: “a civilian who has joined a terrorist organization which has become his ‘home’, and in the framework of his role in that organization he commits a chain of hostilities, with short periods of rest between them, loses his immunity from attack ‘for such time’ as he is committing the chain of acts. Indeed, regarding such a civilian, the rest between hostilities is nothing other than preparation for the next hostility” (*ibid.*, § 39).

14 Art. 1 HIV R; Arts 13 [1], [2], [3] and [6] GC I and GC II; Art. 4 A [1], [2], [3] and [6] GC III.

15 In the ICRC’s view, in international armed conflict, any person failing to qualify for prisoner-of-war status under Art. 4 GC III must be afforded the fundamental guarantees set out in Art. 75 AP I, which have attained customary nature and, subject to the nationality requirements of Art. 4 GC IV, also remains a “protected person” within the meaning of GC IV.

16 As illustrated by the treatment of spies (Arts 29-31 HIV R; Art. 46 AP I) and of other combatants failing to distinguish themselves as required by IHL (Art. 44 AP I), loss of entitlement to combatant privilege or prisoner-of-war status does not necessarily lead to loss of membership in the armed forces.

17 While the prevailing opinion during the 2006 expert meeting was supportive of this interpretation, some concerns were expressed that this approach could be misunderstood as creating a category of persons protected neither by GC III nor by GC IV (Report DPH 2006, pp. 15 f.). For the ICRC’s position in this respect see, e.g., above N 15.

in all armed conflicts between the *armed forces of the parties to the conflict* and the *civilian population*; it would also contradict the definition of international armed conflicts as confrontations between States and not between States and non-State actors.²⁵ Organized armed groups operating within the broader context of an international armed conflict without belonging to a party to that conflict could still be regarded as parties to a separate non-international armed conflict provided that the violence reaches the required threshold.²⁶ Whether the individuals are civilians or members of the armed forces of a party to the conflict would then have to be determined under IHL governing non-international armed conflicts.²⁷

Lastly, it should be pointed out that organized armed violence failing to qualify as an international or non-international armed conflict remains an issue of law enforcement, whether the perpetrators are viewed as rioters, terrorists, pirates, gangsters, hostage-takers or other organized criminals.²⁸

c) Determination of membership

For the regular armed forces of States, individual membership is generally regulated by domestic law and expressed through formal integration into permanent units distinguishable by uniforms, insignia, and equipment. The same applies where armed units of police, border guard, or similar uniformed forces are incorporated into State armed forces. Members of regularly constituted forces are not civilians, regardless of their individual conduct or the function they assume within the armed forces. For the purposes of the principle of distinction, membership in regular State armed forces ceases, and civilian protection is restored, when a member disengages from active duty and re-integrates into civilian life, whether due to a full discharge from duty or as a deactivated reservist.

Membership in irregular armed forces, such as militias, volunteer corps, or resistance movements belonging to a party to the conflict, generally is not regulated by domestic law and can only be reliably determined on the basis of functional criteria, such as those applying to organized armed groups in non-international armed conflict.²⁹

3. LEVÉE EN MASSE

As far as the *levée en masse* is concerned, all relevant instruments are based on the same definition, which refers to the inhabitants of a non-occupied territory who, on the approach of the enemy, spontaneously take up arms to resist the invading forces without having had time to form themselves into regular armed units, provided they carry arms openly and respect the laws and customs of war.³⁰ Participants in a *levée en masse* are the only armed actors who are excluded from the civilian population although, by definition, they operate spontaneously and lack sufficient organization and command to qualify as members of the armed forces. All other persons who directly participate in hostilities on a merely spontaneous, sporadic or unorganized basis must be regarded as civilians.

²⁵ See also Report DPH 2006, pp. 16 ff., 52 f.; Report DPH 2008, pp. 43 f. For States party to Additional Protocol I, the law governing international armed conflicts also applies to armed conflicts between States and national liberation movements within the meaning of Article 1 [4] AP I.

²⁶ According to *Commentary GC III* (above N 20), p. 57: "Resistance movements must be fighting on behalf of a 'Party to the conflict' in the sense of Art. 2, otherwise the provisions of Art. 3 relating to non-international conflicts are applicable, since such militias and volunteer corps are not entitled to style themselves a 'Party to the conflict'". The *travaux préparatoires* are silent on the possible parallel existence of international and non-international aspects within the greater context of the same armed conflict. For the relevant discussion during the expert meetings, see Report DPH 2005, p. 10; Report DPH 2006, pp. 17 ff. and 53 f.; Report DPH 2008, pp. 43 f. It should be noted that "internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature" (Art. 1 [2] AP II) do not reach the threshold of "protracted armed violence", which is required for the emergence of a separate non-international armed conflict (ICTY, *Prosecutor v. Tadić*, Case No. IT-94-I-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction of 2 October 1995, § 70).

²⁷ See below Section II.

²⁸ See Report DPH 2006, p. 16; Report DPH 2008, pp. 44, 49.

²⁹ See below Section II.3.(b) and, with regard to private contractors, Section III.2.

³⁰ Art. 2 H IV R; Art. 4 [6] GC III. See also the reference to Art. 4 [6] GC III in Art. 50 [1] AP I.

4. CONCLUSION

For the purposes of the principle of distinction in international armed conflict, all persons who are neither members of the armed forces of a party to the conflict nor participants in a *levée en masse* are civilians and, therefore, entitled to protection against direct attack unless and for such time as they take a direct part in hostilities. Membership in irregularly constituted militia and volunteer corps, including organized resistance movements, belonging to a party to the conflict must be determined based on the same functional criteria that apply to organized armed groups in non-international armed conflict.

II. THE CONCEPT OF CIVILIAN IN NON-INTERNATIONAL ARMED CONFLICT

For the purposes of the principle of distinction in non-international armed conflict, all persons who are not members of State armed forces or organized armed groups of a party to the conflict are civilians and, therefore, entitled to protection against direct attack unless and for such time as they take a direct part in hostilities. In non-international armed conflict, organized armed groups constitute the armed forces of a non-State party to the conflict and consist only of individuals whose continuous function it is to take a direct part in hostilities (“continuous combat function”).

I. MUTUAL EXCLUSIVENESS OF THE CONCEPTS OF CIVILIAN, ARMED FORCES AND ORGANIZED ARMED GROUPS

a) Lack of express definitions in treaty law

Treaty IHL governing non-international armed conflict uses the terms “civilian”, “armed forces” and “organized armed group” without expressly defining them. These concepts must therefore be interpreted in good faith in accordance with the ordinary meaning to be given to them in their context and in the light of the object and purpose of IHL.³¹

While it is generally recognized that members of State armed forces in non-international armed conflict do not qualify as civilians, treaty law, State practice, and international jurisprudence have not unequivocally settled whether the same applies to members of organized armed groups (i.e. the armed forces of non-State parties to an armed conflict).³² Because organized armed groups generally cannot qualify as regular armed forces under national law, it might be tempting to conclude that membership in such groups is simply a continuous form of civilian direct participation

31. Art. 31 [1] Vienna Convention on the Law of Treaties.

32. See *Customary IHL*, above N 7, Vol. I, p. 19.

in hostilities. Accordingly, members of organized armed groups would be regarded as civilians who, owing to their continuous direct participation in hostilities, lose protection against direct attack for the entire duration of their membership. However, this approach would seriously undermine the conceptual integrity of the categories of persons underlying the principle of distinction, most notably because it would create parties to non-international armed conflicts whose entire armed forces remain part of the civilian population.³³ As the wording and logic of Article 3 GC I-IV and Additional Protocol II (AP II) reveals, civilians, armed forces, and organized armed groups of the parties to the conflict are mutually exclusive categories also in non-international armed conflict.

b) Article 3 common to the Geneva Conventions

Although Article 3 GC I-IV generally is not considered to govern the conduct of hostilities, its wording allows certain conclusions to be drawn with regard to the generic distinction between the armed forces and the civilian population in non-international armed conflict. Most notably, Article 3 GC I-IV provides that “each Party to the conflict” must afford protection to “persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat*”.³⁴ Thus, both State and non-State parties to the conflict have armed forces distinct from the civilian population.³⁵ This passage also makes clear that members of such armed forces, in contrast to other persons, are considered as “taking no active part in the hostilities” only once they have disengaged from their fighting function (“have laid down their arms”) or are placed *hors de combat*; mere suspension of combat is insufficient. Article 3 GC I-IV thus implies a concept of civilian comprising those individuals “who do not bear arms” on behalf of a party to the conflict.³⁶

³³ On the danger of extending the concept of direct participation in hostilities beyond specific acts, see also below Section IV.2. During the expert meetings, the approach based on continuous direct participation in hostilities was criticized as blurring the distinction made by IHL between loss of protection based on conduct (civilians) and on status or function (members of armed forces or organized armed groups). See Background Doc. DPH 2004, p. 36; Background Doc. DPH 2005, WS IV-V, p. 10; Report DPH 2005, pp. 44, 48, 50. See also the discussions in Report DPH 2006, pp. 20 ff.; Report DPH 2008, pp. 46 ff.

³⁴ Art. 3 GC I-IV.

³⁵ According to *Commentary GC III* (above N 20), p. 37: “Speaking generally, it must be recognized that the conflicts referred to in Art. 3 are armed conflicts, with armed forces on either side engaged in hostilities – conflicts, in short, which are in many respects similar to an international war [...]”.

³⁶ According to Pictet (ed.), *Commentary on the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (Geneva: ICRC, 1958), p. 40: “Article 3 has an extremely wide field of application and covers members of the armed forces as well as persons who do not take part in the hostilities. In this instance, however, the Article naturally applies first and foremost to civilians – that is to people who do not bear arms”.

c) Additional Protocol II

While Additional Protocol II³⁷ has a significantly narrower scope of application and uses terms different from those in Article 3 GC I-IV, the generic categorization of persons is the same in both instruments.³⁸ During the Diplomatic Conference of 1974-77, Draft Article 25 [I] AP II defined the concept of civilian as including “anyone who is not a member of the armed forces or of an organized armed group”.³⁹ Although this article was discarded along with most other provisions on the conduct of hostilities in a last minute effort to “simplify” the Protocol, the final text continues to reflect the originally proposed concept of civilian. According to the Protocol, “armed forces”, “dissident armed forces”, and “other organized armed groups” have the function and ability “to carry out sustained and concerted military operations”;⁴⁰ whereas the “civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations” carried out by these forces “unless and for such time as they take a direct part in hostilities”.⁴¹

d) Reconciliation of terminology

In Additional Protocol II, the term “armed forces” is restricted to State armed forces, whereas the armed forces of non-State parties are referred to as “dissident armed forces” or “other organized armed groups”. The notion

³⁷ As of 1 November 2008, 164 States were party to AP II.

³⁸ For the high threshold of application of Additional Protocol II, see Art. 1 [I] AP II.

³⁹ Draft Art. 25 [I] AP II was adopted by consensus in the Third Committee on 4 April 1975 (O.R., Vol. XV, p. 320, CDDH/215/Rev.1). See also the ICRC’s Commentary (October 1973) on the original version of Art. 25 [I] of the Draft of AP II submitted to the Diplomatic Conference of 1974 to 1977: “[...] sont considérés comme civils tous les êtres humains qui se trouvent sur le territoire d’une Partie contractante où se déroule un conflit armé au sens de l’article premier et qui ne font pas partie des forces armées ou groupes armés”.

⁴⁰ Art. 1 [I] AP II.

⁴¹ Art. 13 [I] and [3] AP I. This interpretation is further supported by the respective contexts in which the Protocol refers to “civilians” (Arts 13, 14, 17 AP II) and the “civilian population” (title Part IV AP II; Arts 5 [I] (b) and (c), 13, 14, 15, 17 and 18 AP II).

of “armed forces” in Article 3 GC I-IV, on the other hand, includes all three categories juxtaposed in Article 1 [I] AP II, namely State armed forces, dissident armed forces, and other organized armed groups. Thus, similar to situations of international armed conflict, the concept of civilian in non-international armed conflict is negatively delimited by the definition of “armed forces” (Article 3 GC I-IV) or, expressed in the terminology of Additional Protocol II, of State “armed forces”, “dissident armed forces” and “other organized armed groups”.⁴² For the purposes of this Interpretive Guidance, the armed forces of States party to a non-international armed conflict are referred to as “State armed forces”, whereas the armed forces of non-State parties are described as “organized armed groups”.⁴³ Where not stated otherwise, the concept of “organized armed group” includes both “dissident armed forces” and “other organized armed groups” (Article 1 [I] AP II).

2. STATE ARMED FORCES

a) Basic concept

There is no reason to assume that States party to both Additional Protocols desired distinct definitions of State armed forces in situations of international and non-international armed conflict. According to the *travaux préparatoires* for Additional Protocol II, the concept of armed forces of a High Contracting Party in Article 1 [I] AP II was intended to be broad enough to include armed actors who do not necessarily qualify as armed forces under domestic law, such as members of the national guard, customs, or police forces, provided that they do, in fact, assume the function of armed forces.⁴⁴ Thus, comparable to the concept of armed forces in Additional Protocol I, State armed forces under Additional

⁴² Affirmative ICTY, *Prosecutor v. Martić*, Case No. IT-95-11-A, Judgment of 8 October 2008, §§ 300-302. This was the prevailing view also during the expert meetings (see Report DPH 2005, pp. 43 f.; Report DPH 2006, pp. 20 ff.; Report DPH 2008, pp. 46 ff.).

⁴³ Note that the concept of organized armed group is also used in IHL governing international armed conflict to describe organized armed actors other than the regular armed forces which operate under a command responsible to a party to the conflict and, therefore, qualify as part of the armed forces of that party (Art. 43 [I] AP I; see above Section I).

⁴⁴ See *Commentary AP* (above N 10), § 4462: “The term ‘armed forces’ of the High Contracting Party should be understood in the broadest sense. In fact, this term was chosen in preference to others suggested such as, for example, ‘regular armed forces’, in order to cover all the armed forces, including those not included in the definition of the army in the national legislation of some countries (national guard, customs, police forces or any other similar force)”, referring to O.R., Vol. X, p. 94, CDDH/I/238/Rev.1. On the potential qualification of police forces as part of the armed forces of a party to the conflict, see also the discussion in Report DPH 2005, p. 11; Report DPH 2006, pp. 43, 52 f.; Report DPH 2008, pp. 54, 64, 68.

Protocol II include both the regular armed forces and other armed groups or units organized under a command responsible to the State.⁴⁵

b) Determination of membership

At least as far as regular armed forces are concerned, membership in State armed forces is generally defined by domestic law and expressed through formal integration into permanent units distinguishable by uniforms, insignia and equipment. The same applies where armed units of police, border guard, or similar uniformed forces are incorporated into the armed forces. Members of regularly constituted forces are not civilians, regardless of their individual conduct or of the function they assume within the armed forces. For the purposes of the principle of distinction, membership in regular State armed forces ceases, and civilian protection is restored, when a member disengages from active duty and re-integrates into civilian life, whether due to a full discharge from duty or as a deactivated reservist. Just as in international armed conflict, membership in irregular State armed forces, such as militia, volunteer or paramilitary groups, generally is not regulated by domestic law and can only be reliably determined on the basis of the same functional criteria that apply to organized armed groups of non-State parties to the conflict.⁴⁶

3. ORGANIZED ARMED GROUPS

a) Basic concept

Organized armed groups belonging to a non-State party to an armed conflict include both dissident armed forces and other organized armed groups. Dissident armed forces essentially constitute part of a State’s armed

⁴⁵ According to Bothe et al., *New Rules for Victims of Armed Conflicts: Commentary on the Two 1977 Protocols Additional to the Geneva Conventions of 1949* (The Hague: Martinus Nijhoff, 1982), p. 672, the terms “organized” and “under responsible command” in Art. 1 [I] AP II “inferentially [...] recognize the essential conditions prescribed under art. 43 of Protocol I; that the armed force be linked to one of the parties to the conflict; that they be organized; and that they be under responsible command”.

⁴⁶ See above Section 1.2.(c) and below Section II.3.(b).

forces that have turned against the government.⁴⁷ Other organized armed groups recruit their members primarily from the civilian population but develop a sufficient degree of military organization to conduct hostilities on behalf of a party to the conflict, albeit not always with the same means, intensity and level of sophistication as State armed forces.

In both cases, it is crucial for the protection of the civilian population to distinguish a non-State party to a conflict (e.g., an insurgency, a rebellion, or a secessionist movement) from its armed forces (i.e., an organized armed group).⁴⁸ As with State parties to armed conflicts, non-State parties comprise both fighting forces and supportive segments of the civilian population, such as political and humanitarian wings. The term organized armed group, however, refers exclusively to the armed or military wing of a non-State party: its armed forces in a functional sense. This distinction has important consequences for the determination of membership in an organized armed group as opposed to other forms of affiliation with, or support for, a non-State party to the conflict.

b) Determination of membership

Dissident armed forces: Although members of dissident armed forces are no longer members of State armed forces, they do not become civilians merely because they have turned against their government. At least to the extent, and for as long as, they remain organized under the structures of the State armed forces to which they formerly belonged, these structures should continue to determine individual membership in dissident armed forces as well.

Other organized armed groups: More difficult is the concept of membership in organized armed groups other than dissident armed forces. Membership in these irregularly constituted groups has no basis in domestic law. It is rarely formalized through an act of integration other than taking up a certain function for the group; and it is not consistently

expressed through uniforms, fixed distinctive signs, or identification cards. In view of the wide variety of cultural, political, and military contexts in which organized armed groups operate, there may be various degrees of affiliation with such groups that do not necessarily amount to “membership” within the meaning of IHL. In one case, affiliation may turn on individual choice, in another on involuntary recruitment, and in yet another on more traditional notions of clan or family.⁴⁹ In practice, the informal and clandestine structures of most organized armed groups and the elastic nature of membership render it particularly difficult to distinguish between a non-State party to the conflict and its armed forces.

As has been shown above, in IHL governing non-international armed conflict, the concept of organized armed group refers to non-State armed forces in a strictly functional sense. For the practical purposes of the principle of distinction, therefore, membership in such groups cannot depend on abstract affiliation, family ties, or other criteria prone to error, arbitrariness or abuse. Instead, membership must depend on whether the continuous function assumed by an individual corresponds to that collectively exercised by the group as a whole, namely the conduct of hostilities on behalf of a non-State party to the conflict.⁵⁰ Consequently, under IHL, the decisive criterion for individual membership in an organized armed group is whether a person assumes a continuous function for the group involving his or her direct participation in hostilities (hereafter: “continuous combat function”).⁵¹ Continuous combat function does not imply *de jure* entitlement to combatant privilege.⁵² Rather, it

49 Background Doc. DPH 2005, WS IV-V, P. 15.

50 On the collective or individual nature of continuous combat function, see Report DPH 2008, pp. 55 ff.

51 On the qualification of conduct as direct participation in hostilities, see below Section V.

52 Combatant privilege, namely the right to directly participate in hostilities with immunity from domestic prosecution for lawful acts of war, is afforded only to members of the armed forces of parties to an international armed conflict (except medical and religious personnel), as well as to participants in a *levée en masse* (Arts. 1 and 2 H IV R; Art. 43 [1] AP I). Although all privileged combatants have a right to directly participate in hostilities, they do not necessarily have a function requiring them to do so (e.g. cooks, administrative personnel). Conversely, individuals who assume continuous combat function outside the privileged categories of persons, as well as in non-international armed conflict, are not entitled to combatant privilege under IHL (see also below Section X).

47 See *Commentary AP* (above N 10), § 4460.

48 Although Art. 1 AP II refers to armed conflicts “between” State armed forces and dissident armed forces or other organized armed groups, the actual parties to such a conflict are, of course, the High Contracting Party and the opposing non-State party, and not their respective armed forces.

distinguishes members of the organized fighting forces of a non-State party from civilians who directly participate in hostilities on a merely spontaneous, sporadic, or unorganized basis, or who assume exclusively political, administrative or other non-combat functions.⁵³

Continuous combat function requires lasting integration into an organized armed group acting as the armed forces of a non-State party to an armed conflict. Thus, individuals whose continuous function involves the preparation, execution, or command of acts or operations amounting to direct participation in hostilities are assuming a continuous combat function. An individual recruited, trained and equipped by such a group to continuously and directly participate in hostilities on its behalf can be considered to assume a continuous combat function even before he or she first carries out a hostile act. This case must be distinguished from persons comparable to reservists who, after a period of basic training or active membership, leave the armed group and re-integrate into civilian life. Such “reservists” are civilians until and for such time as they are called back to active duty.⁵⁴

Individuals who continuously accompany or support an organized armed group, but whose function does not involve direct participation in hostilities, are not members of that group within the meaning of IHL. Instead, they remain civilians assuming support functions, similar to private contractors and civilian employees accompanying State armed forces.⁵⁵ Thus, recruiters, trainers, financiers and propagandists may continuously contribute to the general war effort of a non-State party, but they are not members of an organized armed group belonging to that party unless their function additionally includes activities amounting to direct participation in hostilities.⁵⁶ The same applies to individuals whose

function is limited to the purchasing, smuggling, manufacturing and maintaining of weapons and other equipment outside specific military operations or to the collection of intelligence other than of a tactical nature.⁵⁷ Although such persons may accompany organized armed groups and provide substantial support to a party to the conflict, they do not assume continuous combat function and, for the purposes of the principle of distinction, cannot be regarded as members of an organized armed group.⁵⁸ As civilians, they benefit from protection against direct attack unless and for such time as they directly participate in hostilities, even though their activities or location may increase their exposure to incidental death or injury.

In practice, the principle of distinction must be applied based on information which is practically available and can reasonably be regarded as reliable in the prevailing circumstances. A continuous combat function may be openly expressed through the carrying of uniforms, distinctive signs, or certain weapons. Yet it may also be identified on the basis of conclusive behaviour, for example where a person has repeatedly directly participated in hostilities in support of an organized armed group in circumstances indicating that such conduct constitutes a continuous function rather than a spontaneous, sporadic, or temporary role assumed for the duration of a particular operation. Whatever criteria are applied in implementing the principle of distinction in a particular context, they must allow to reliably distinguish members of the armed forces of a non-State party to the conflict from civilians who do not directly participate in hostilities, or who do so on a merely spontaneous, sporadic or unorganized basis.⁵⁹ As will be shown, that determination remains subject to all feasible precautions and to the presumption of protection in case of doubt.⁶⁰

53 During the expert meetings, the prevailing view was that persons cease to be civilians within the meaning of IHL for as long as they continuously assume a function involving direct participation in hostilities (“continuous combat function”) for an organized armed group belonging to a party to a non-international armed conflict (Expert Paper DPH 2004 (Prof. M. Bothe); Report DPH 2005, pp. 43 f., 48 ff., 53 ff., 63 ff., 82 f.; Report DPH 2006, pp. 9 ff., 20 ff., 29-32, 66 f.; Report DPH 2008, pp. 46-60).

54 See also above Sections I.2.(c) and II.2.(b) and, more generally, below Section VII.2.

55 See below Section III.

56 Regarding the qualification of recruiting and training, financing and propaganda as direct participation in hostilities, see below Sections V.2.(a) and (b); VI.1.

57 Regarding the qualification as direct participation in hostilities of purchasing, smuggling, transporting, manufacturing and maintaining of weapons, explosives and equipment, as well as of collecting and providing intelligence, see below Sections V.1.(a); V.2.(a), (b) and (g); VI.1.

58 Obviously, such lack of “membership” does not exclude that civilian supporters of organized armed groups may incur criminal responsibility for their activities under national and, in the case of international crimes, also international law. See below Section X.

59 See also Report DPH 2006, pp. 25 ff.; Report DPH 2008, pp. 49-57.

60 See below Section VIII.

4. CONCLUSION

For the purposes of the principle of distinction in non-international armed conflict, all persons who are not members of State armed forces or organized armed groups of a party to the conflict are civilians and, therefore, entitled to protection against direct attack unless and for such time as they take a direct part in hostilities. In non-international armed conflict, organized armed groups constitute the armed forces of a non-State party to the conflict and consist only of individuals whose continuous function it is to take a direct part in hostilities (“continuous combat function”).

III. PRIVATE CONTRACTORS AND CIVILIAN EMPLOYEES

Private contractors and employees of a party to an armed conflict who are civilians (see above I and II) are entitled to protection against direct attack unless and for such time as they take a direct part in hostilities. Their activities or location may, however, expose them to an increased risk of incidental death or injury even if they do not take a direct part in hostilities.

1. PARTICULAR DIFFICULTIES RELATED TO PRIVATE CONTRACTORS AND CIVILIAN EMPLOYEES

In recent decades, parties to armed conflicts have increasingly employed private contractors and civilian employees in a variety of functions traditionally performed by military personnel.⁶¹ Generally speaking, whether private contractors and employees of a party to an armed conflict are civilians within the meaning of IHL and whether they directly participate in hostilities depends on the same criteria as would apply to any other civilian.⁶² The special role of such personnel requires that these determinations be made with particular care and with due consideration for the geographic and organizational closeness of many private contractors and civilian employees to the armed forces and the hostilities.

It should also be noted that the purpose of the distinction between civilians and members of the armed forces may not be identical under domestic and international law. Depending on national legislation, membership in the armed forces may have administrative, jurisdictional, and other consequences irrelevant to the principle of distinction in the conduct of hostilities. Under IHL, the primary consequences of membership in the armed forces are the exclusion from the category of civilian and, in

⁶¹ This trend led to an initiative by the Swiss government, in cooperation with the ICRC, to address the issue of private military and security companies. This initiative resulted in the Montreux Document on Pertinent International Legal Obligations and Good Practices for States Related to Operations of Private Military and Security Companies During Armed Conflict’ of 17 September 2008, agreed upon by 17 participating States.

⁶² On the concept of civilian, see above Sections I and II. On the concept of direct participation in hostilities, see below Sections IV to VI.

international armed conflict, the right to directly participate in hostilities on behalf of a party to the conflict (combatant privilege). Where the concepts of civilian and armed forces are defined for the purpose of the conduct of hostilities, the relevant standards must be derived from IHL.⁶³

The great majority of private contractors and civilian employees currently active in armed conflicts have not been incorporated into State armed forces and assume functions that clearly do not involve their direct participation in hostilities on behalf of a party to the conflict (i.e. no continuous combat function).⁶⁴ Therefore, under IHL, they generally come within the definition of civilians.⁶⁵ Although they are thus entitled to protection against direct attack, their proximity to the armed forces and other military objectives may expose them more than other civilians to the dangers arising from military operations, including the risk of incidental death or injury.⁶⁶

In some cases, however, it may be extremely difficult to determine the civilian or military nature of contractor activity. For example, the line between the defence of military personnel and other military objectives against enemy attacks (direct participation in hostilities) and the protection of those same persons and objects against crime or violence unrelated to the hostilities (law enforcement/defence of self or others) may be thin. It is therefore particularly important in this context to observe the general rules of IHL on precautions and presumptions in situations of doubt.⁶⁷

2. INTERNATIONAL ARMED CONFLICT

Civilians, including those formally authorized to accompany the armed forces and entitled to prisoner-of-war status upon capture, were never meant to directly participate in hostilities on behalf of a party to the

conflict.⁶⁸ As long as they are not incorporated into the armed forces, private contractors and civilian employees do not cease to be civilians simply because they accompany the armed forces and or assume functions other than the conduct of hostilities that would traditionally have been performed by military personnel. Where such personnel directly participate in hostilities without the express or tacit authorization of the State party to the conflict, they remain civilians and lose their protection against direct attack for such time as their direct participation lasts.⁶⁹

A different conclusion must be reached for contractors and employees who, to all intents and purposes, have been incorporated into the armed forces of a party to the conflict, whether through a formal procedure under national law or *de facto* by being given a continuous combat function.⁷⁰ Under IHL, such personnel would become members of an organized armed force, group, or unit under a command responsible to a party to the conflict and, for the purposes of the principle of distinction, would no longer qualify as civilians.⁷¹

3. NON-INTERNATIONAL ARMED CONFLICT

The above observations also apply, *mutatis mutandis*, in non-international armed conflicts. Thus, for such time as private contractors assume a continuous combat function for an organized armed group belonging to a non-State party, they become members of that group.⁷² Theoretically,

⁶³ See Report DPH 2005, pp. 74 f.

⁶⁴ On the concept of continuous combat function, see above Section II.3.(b).

⁶⁵ Report DPH 2005, p. 80.

⁶⁶ Report DPH 2006, pp. 34 f.

⁶⁷ See below Section VIII.

⁶⁸ Of the categories of persons entitled to prisoner-of-war status under Art. 4 [1] to [6] GC III, those described in Art. 4 [4] GC III (civilians accompanying the armed forces) and Art. 4 [5] GC III (civilian crew members of the merchant marine or civil aircraft) are civilians (Art. 50 [1] AP I). As any other civilians, they are excluded from the categories entitled to combatant privilege, namely members of the armed forces and participants in a *levée en masse* (Art. 43 [1] and [2], 50 [1] AP I, Arts 1 and 2 H IV R) and, therefore, do not have a right to directly participate in hostilities with immunity from domestic prosecution. See also below Section X, as well as the brief discussion in Report DPH 2006, pp. 35 f.

⁶⁹ Report DPH 2005, p. 82.

⁷⁰ On the concept of continuous combat function, see above Section II.3.(b). On the subsidiary functional determination of membership specifically in international armed conflict, see above Section I.3.(c).

⁷¹ The prevailing view expressed during the expert meetings was that, for the purposes of the conduct of hostilities, private contractors and employees authorized by a State to directly participate in hostilities on its behalf would cease to be civilians and become members of its armed forces under IHL, regardless of formal incorporation. It was noted that, from the historical *letters of marque and reprisal* issued to privateers to the modern combatant privilege, direct participation in hostilities with the authority of a State has always been regarded as legitimate and, as such, exempt from domestic prosecution. See Report DPH 2003, pp. 4 f.; Report DPH 2004, pp. 11 ff., 14; Expert Paper DPH 2004 (Prof. M. Schmitt), pp. 8 ff.; Report DPH 2005, pp. 74 ff. and 80 f.; Background Doc. DPH 2005, WS VIII-IX, p. 17.

⁷² See Report DPH 2005, pp. 81 f.

private military companies could even become independent non-State parties to a non-international armed conflict.⁷³ Private contractors and civilian employees who are neither members of State armed forces nor members of organized armed groups, however, must be regarded as civilians and, therefore, are protected against direct attack unless and for such time as they directly participate in hostilities.

4. CONCLUSION

Whether private contractors and employees of a party to the conflict qualify as civilians within the meaning of IHL and whether they directly participate in hostilities depends on the same criteria as are applicable to any other civilian. The geographic and organizational closeness of such personnel to the armed forces and the hostilities require that this determination be made with particular care. Those who qualify as civilians are entitled to protection against direct attack unless and for such time as they directly participate in hostilities, even though their activities and location may expose them to an increased risk of incidental injury and death. This does not rule out the possibility that, for purposes other than the conduct of hostilities, domestic law might regulate the status of private contractors and employees differently from IHL.

B. THE CONCEPT OF DIRECT PARTICIPATION IN HOSTILITIES

Treaty IHL does not define direct participation in hostilities, nor does a clear interpretation of the concept emerge from State practice or international jurisprudence. The notion of direct participation in hostilities must therefore be interpreted in good faith in accordance with the ordinary meaning to be given to its constituent terms in their context and in light of the object and purpose of IHL.⁷⁴

Where treaty law refers to hostilities, that notion is intrinsically linked to situations of international or non-international armed conflict.⁷⁵ Therefore, the concept of direct participation in hostilities cannot refer to conduct occurring outside situations of armed conflict, such as during internal disturbances and tensions, including riots, isolated and sporadic acts of violence and other acts of a similar nature.⁷⁶ Moreover, even during armed conflict, not all conduct constitutes part of the hostilities.⁷⁷ It is the purpose of the present chapter to identify the criteria that determine whether and, if so, for how long a particular conduct amounts to direct participation in hostilities.

In practice, civilian participation in hostilities occurs in various forms and degrees of intensity and in a wide variety of geographical, cultural, political, and military contexts. Therefore, in determining whether a particular conduct

⁷⁴ Art. 31 [1] Vienna Convention on the Law of Treaties.

⁷⁵ The concept of hostilities is frequently used in treaties regulating situations of international and non-international armed conflict, for example in the following contexts: opening of hostilities, conduct of hostilities, acts of hostility, persons (not) taking part in hostilities, effects of hostilities, suspension of hostilities, end of hostilities. See Title and Art. 1 H III; Title Section II H IV R; Art. 3 [1] GC I-IV; Art. 17 GC I; Art. 33 GC II; Title Section II and Arts 21 [3], 67, 118, 119 GC III; Arts 49 [2], 130, 133, 134, 135 GC IV; Arts 33, 34, 40, 43 [2], 45, 47, 51 [3], 59, 60 AP I and Title Part IV, Section I AP I; Arts 4 and 13 [3] AP II; Arts 3 [1] – [3] and 4 ERW Protocol.

⁷⁶ According to Art. 1 [2] AP II, such situations do not constitute armed conflicts.

⁷⁷ In fact, armed conflict can arise without any occurrence of hostilities, namely through a declaration of war or the occupation of territory without armed resistance (Art. 2 GC I-IV). Furthermore, considerable portions of IHL deal with issues other than the conduct of hostilities, most notably the exercise of power and authority over persons and territory in the hands of a party to the conflict. See also Report DPH 2005, pp. 13, 18 f.

amounts to direct participation in hostilities, due consideration must be given to the circumstances prevailing at the relevant time and place.⁷⁸ Nevertheless, the importance of the circumstances surrounding each case should not divert attention from the fact that direct participation in hostilities remains a legal concept of limited elasticity that must be interpreted in a theoretically sound and coherent manner reflecting the fundamental principles of IHL.

IV. DIRECT PARTICIPATION IN HOSTILITIES AS A SPECIFIC ACT

The notion of direct participation in hostilities refers to specific acts carried out by individuals as part of the conduct of hostilities between parties to an armed conflict.

I. BASIC COMPONENTS OF THE NOTION OF DIRECT PARTICIPATION IN HOSTILITIES

The notion of direct participation in hostilities essentially comprises two elements, namely that of “hostilities” and that of “direct participation” therein.⁷⁹ While the concept of “hostilities” refers to the (collective) resort by the parties to the conflict to means and methods of injuring the enemy,⁸⁰ “participation” in hostilities refers to the (individual) involvement of a person in these hostilities.⁸¹ Depending on the quality and degree of such involvement, individual participation in hostilities may be described as “direct” or “indirect”. The notion of direct participation in hostilities has evolved from the phrase “taking no active part in the hostilities” used in Article 3 GC I-IV. Although the English texts of the Geneva Conventions and Additional Protocols use the words “active”⁸² and “direct”,⁸³ respectively, the consistent use of the phrase “*participent directement*” in the equally authentic French texts demonstrate that the terms “direct” and “active” refer to the same quality and degree of individual participation in hostilities.⁸⁴ Furthermore, as the notion of taking a direct part in hostilities

79 Report DPH 2005, p. 17; Background Doc. DPH 2005, WS II-III, p. 2.

80 See Art. 22 HIV R (Section II on “Hostilities”). Treaty law does not establish uniform terminology for the conduct of hostilities but refers, apart from “hostilities”, also to “warfare” (Title Part III, Section I and Art. 35 [1] AP I), “military operations” (Art. 53 GC IV; Art. 51 [1] AP I; Art. 13 [1] AP II), or simply “operations” (Art. 48 AP I).

81 See Arts 43 [2] AP I; 45 [1] and [3] AP I; 51 [3] AP I; 67 [1] (e) AP I; 13 [3] AP II.

82 Art. 3 GC I-IV.

83 Arts 51 [3] AP I; 43 [2] AP I; 67 [1] (e) AP I and 13 [3] AP II.

84 This was the prevailing view also during the expert meetings (Report DPH 2005, p. 29; Report DPH 2006, p. 62). The International Criminal Tribunal for Rwanda (ICTR) affirmed the synonymous meaning of the notions of “active” and “direct” participation in hostilities: ICTR, *Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, Judgment of 2 September 1998, § 629. At first sight, it may appear that the Preparatory Committee for the Establishment of an International Criminal Court (ICC) implied a distinction between the terms “active” and “direct” in the context of the recruitment of children when it explained that: “The words ‘using’ and ‘participate’ have been adopted in order to cover both direct participation in combat and also active participation in military activities linked to combat”. Strictly speaking, however, the Committee made a distinction between “combat” and “military activities linked to combat”, not between “active” and “direct” participation.

78 See also below Section VIII. See further: Report DPH 2006, pp. 25 ff., 70 ff.

is used synonymously in the Additional Protocols I and II, it should be interpreted in the same manner in international and non-international armed conflict.⁸⁵

2. RESTRICTION TO SPECIFIC ACTS

In treaty IHL, individual conduct that constitutes part of the hostilities is described as direct participation in hostilities, regardless of whether the individual is a civilian or a member of the armed forces.⁸⁶ Whether individuals directly participate in hostilities on a spontaneous, sporadic, or unorganized basis or as part of a continuous function assumed for an organized armed force or group belonging to a party to the conflict may be decisive for their status as civilians, but has no influence on the scope of conduct that constitutes direct participation in hostilities. This illustrates that the notion of direct participation in hostilities does not refer to a person's status, function, or affiliation, but to his or her engagement in specific hostile acts.⁸⁷ In essence, the concept of hostilities could be described as the sum total of all hostile acts carried out by individuals directly participating in hostilities.⁸⁸

Where civilians engage in hostile acts on a persistently recurrent basis, it may be tempting to regard not only each hostile act as direct participation in hostilities, but even their continued intent to carry out unspecified hostile acts in the future.⁸⁹ However, any extension of the concept of direct participation in hostilities beyond specific acts would blur the distinction made in IHL between *temporary*, *activity-based loss of protection* (due

to direct participation in hostilities), and *continuous, status or function-based loss of protection* (due to combatant status or continuous combat function).⁹⁰ In practice, confusing the distinct regimes by which IHL governs the loss of protection for civilians and for members of State armed forces or organized armed groups would provoke insurmountable evidentiary problems. Those conducting hostilities already face the difficult task of distinguishing between civilians who are and civilians who are not engaged in a specific hostile act (direct participation in hostilities), and distinguishing both of these from members of organized armed groups (continuous combat function) and State armed forces. In operational reality, it would be impossible to determine with a sufficient degree of reliability whether civilians not currently preparing or executing a hostile act have previously done so on a persistently recurrent basis and whether they have the continued intent to do so again. Basing continuous loss of protection on such speculative criteria would inevitably result in erroneous or arbitrary attacks against civilians, thus undermining their protection which is at the heart of IHL.⁹¹ Consequently, in accordance with the object and purpose of IHL, the concept of direct participation in hostilities must be interpreted as restricted to specific hostile acts.⁹²

3. CONCLUSION

The notion of direct participation in hostilities refers to specific hostile acts carried out by individuals as part of the conduct of hostilities between parties to an armed conflict. It must be interpreted synonymously in situations of international and non-international armed conflict. The treaty terms of "direct" and "active" indicate the same quality and degree of individual participation in hostilities.

⁸⁵ This was the prevailing view also during the expert meetings (Background Doc. DPH 2004, p. 30; Report DPH 2004, pp. 15 ff.; Report DPH 2005, p. 13). Of course, this does not exclude that some of the consequences, particularly with regard to immunity from prosecution for having directly participated in hostilities, may be regulated differently for the various categories of persons involved in international and non-international armed conflicts.

⁸⁶ See Arts 43 [2] AP I; 51 [3] AP I; 67 [1] (e) AP I; 13 [3] AP II.
⁸⁷ This was the prevailing view also during the expert meetings (see Report DPH 2004, pp. 24 f.; Report DPH 2005, pp. 17-24; Report DPH 2006, pp. 37 f.; Report DPH 2008, pp. 33 ff.).

⁸⁸ For purposes of this Interpretive Guidance, the notion of "hostile" act refers to a specific act qualifying as direct participation in hostilities. According to *Commentary AP* (above N 10), § 1943, "It seems that the word 'hostilities' covers not only the time that the civilian actually makes use of a weapon, but also, for example, the time that he is carrying it, as well as situations in which he undertakes hostile acts without using a weapon". Verri, *Dictionary of the International Law of Armed Conflict* (Geneva: ICRC, 1992), p. 57, defines hostilities as: "acts of violence by a belligerent against an enemy in order to put an end to his resistance and impose obedience", and Salmon, *Dictionnaire de droit international public* (Bruxelles: Bruylant, 2001), p. 550 (*hostilités*): "Ensemble des actes offensifs ou défensifs et des opérations militaires accomplis par un belligérant dans le cadre d'un conflit armé". See also the use of the term "hostile act" in Arts 41 [2] and 42 [2] AP I. On the meaning and interrelation of the notions of "hostilities" and "hostile acts", see further: Report DPH 2004, pp. 24 f.; Report DPH 2005, pp. 17-24; Report DPH 2006, pp. 37 f.; Report DPH 2008, pp. 28 f.; Report DPH 2008, pp. 35-40. For a similar argument made in recent domestic case law, see: *Israel HCI, PCATI v. Israel*, above N 24, § 39.

⁹⁰ See also above, Section II.3. On the distinct temporal scopes of the loss of protection for organized armed actors and civilians, see below Section VII.

⁹¹ Report DPH 2008, pp. 36-42.

⁹² This also was the prevailing view during the expert meetings (see Report DPH 2006, p. 38).

V. CONSTITUTIVE ELEMENTS OF DIRECT PARTICIPATION IN HOSTILITIES

In order to qualify as direct participation in hostilities, a specific act must meet the following cumulative criteria:

1. the act must be likely to adversely affect the military operations or military capacity of a party to an armed conflict or, alternatively, to inflict death, injury, or destruction on persons or objects protected against direct attack (threshold of harm), and
2. there must be a direct causal link between the act and the harm likely to result either from that act, or from a coordinated military operation of which that act constitutes an integral part (direct causation), and
3. the act must be specifically designed to directly cause the required threshold of harm in support of a party to the conflict and to the detriment of another (belligerent nexus).

Acts amounting to direct participation in hostilities must meet three cumulative requirements: (1) a threshold regarding the harm likely to result from the act, (2) a relationship of direct causation between the act and the expected harm, and (3) a belligerent nexus between the act and the hostilities conducted between the parties to an armed conflict.⁹³ Although these elements are very closely interrelated, and although there may be areas of overlap between them, each of them will be discussed separately here.

⁹³ On the cumulative nature of these requirements, see also Report DPH 2006, pp. 40 f., 43 ff., 49 f.

I. THRESHOLD OF HARM

In order to reach the required threshold of harm, a specific act must be likely to adversely affect the military operations or military capacity of a party to an armed conflict or, alternatively, to inflict death, injury, or destruction on persons or objects protected against direct attack.

For a specific act to qualify as direct participation in hostilities, the harm likely to result from it must attain a certain threshold.⁹⁴ This threshold can be reached either by causing harm of a specifically military nature or by inflicting death, injury, or destruction on persons or objects protected against direct attack. The qualification of an act as direct participation does not require the *materialization* of harm reaching the threshold but merely the objective *likelihood* that the act will result in such harm. Therefore, the relevant threshold determination must be based on “likely” harm, that is to say, harm which may reasonably be expected to result from an act in the prevailing circumstances.⁹⁵

a) Adversely affecting the military operations or military capacity of a party to the conflict

When an act may reasonably be expected to cause harm of a specifically *military nature*, the threshold requirement will generally be satisfied regardless of quantitative gravity. In this context, military harm should be interpreted as encompassing not only the infliction of death, injury, or destruction on military personnel and objects,⁹⁶ but essentially any consequence adversely affecting the military operations or military capacity of a party to the conflict.⁹⁷

⁹⁴ Background Doc. DPH 2004, pp. 27 f.; Background Doc. DPH 2005, WS II-III, p. 6.

⁹⁵ Background Doc. DPH 2004, p. 25; Report DPH 2005, p. 33.

⁹⁶ The use of weapons or other means to commit acts of violence against human and material enemy forces is probably the most uncontroversial example of direct participation in hostilities (*Customary IHL*, above N 7, Vol. I, Rule 6, p. 22).

⁹⁷ During the expert meetings, there was wide agreement that the causation of military harm as part of the hostilities did not necessarily presuppose the use of armed force or the causation of death, injury or destruction (Report DPH 2005, p. 14), but essentially included “all acts that adversely affect or aim to adversely affect the enemy’s pursuance of its military objective or goal” (Report DPH 2005, pp. 22 f., 31). The concerns expressed by some experts that the criterion of “adversely affecting” military operations or military capacity was too wide and vague and could be misunderstood to authorize the killing of civilians without any military necessity are addressed below in Section IX (see Report DPH 2006, pp. 41 f.).

For example, beyond the killing and wounding of military personnel and the causation of physical or functional damage to military objects, the military operations or military capacity of a party to the conflict can be adversely affected by sabotage and other armed or unarmed activities restricting or disturbing deployments, logistics and communications. Adverse effects may also arise from capturing or otherwise establishing or exercising control over military personnel, objects and territory to the detriment of the adversary. For instance, denying the adversary the military use of certain objects, equipment and territory,⁹⁸ guarding captured military personnel of the adversary to prevent them being forcibly liberated (as opposed to exercising authority over them),⁹⁹ and clearing mines placed by the adversary¹⁰⁰ would reach the required threshold of harm. Electronic interference with military computer networks could also suffice, whether through computer network attacks (CNA) or computer network exploitation (CNE),¹⁰¹ as well as wiretapping the adversary's high command¹⁰² or transmitting tactical targeting information for an attack.¹⁰³

98 Report DPH 2005, pp. 11, 29.

99 The prevailing view during the expert meetings was that guarding captured military personnel was a clear case of direct participation in hostilities (Background Doc. DPH 2004, pp. 9; Report DPH 2005, pp. 15 f.). Nevertheless, to the extent practically possible, the guarding of captured military personnel as a means of preventing their liberation by the enemy should be distinguished from the exercise of administrative, judicial and disciplinary authority over them while in the power of a party to the conflict, including in case of riots or escapes, which are not part of a hostile military operation. This nuanced distinction was not discussed during the expert meetings. See also the discussion on "exercise of power or authority over persons or territory", below NN 163-165 and accompanying text.

100 Report DPH 2005, p. 31.

101 CNA have been tentatively defined as "operations to disrupt, deny, degrade, or destroy information resident in computers and computer networks, or the computer and networks themselves" (Background Doc. DPH 2003, pp. 15 ff., with references) and may be conducted over long distances through radio waves or international communication networks. While they may not involve direct physical damage, the resulting system malfunctions can be devastating. CNE, namely "the ability to gain access to information hosted on information systems and the ability to make use of the system itself" (*ibid.*, with references), though not of a direct destructive nature, could have equally significant military implications. During the expert meetings, CNA causing military harm to the adversary in a situation of armed conflict were clearly regarded as part of the hostilities (Report DPH 2005, p. 14).

102 See Report DPH 2005, p. 29.

103 During the expert meetings, the example was given of a civilian woman who repeatedly peeked into a building where troops had taken cover in order to indicate their position to the attacking enemy forces. The decisive criterion for the qualification of her conduct as direct participation in hostilities was held to be the importance of the transmitted information for the direct causation of harm and, thus, for the execution of a concrete military operation. See Report DPH 2004, p. 5.

At the same time, the conduct of a civilian cannot be interpreted as *adversely* affecting the military operations or military capacity of a party to the conflict simply because it fails to *positively* affect them. Thus, the refusal of a civilian to collaborate with a party to the conflict as an informant, scout or lookout would not reach the required threshold of harm regardless of the motivations underlying the refusal.

b) **Inflicting death, injury or destruction on persons or objects protected against direct attack**

Specific acts may constitute part of the hostilities even if they are not likely to adversely affect the military operations or military capacity of a party to the conflict. In the absence of such military harm, however, a specific act must be likely to cause at least death, injury, or destruction.¹⁰⁴ The most uncontroversial examples of acts that can qualify as direct participation in hostilities even in the absence of military harm are attacks directed against civilians and civilian objects.¹⁰⁵ In IHL, attacks are defined as "acts of violence against the adversary, whether in offence or in defence".¹⁰⁶ The phrase "against the adversary" does not specify the target, but the belligerent nexus of an attack,¹⁰⁷ so that even acts of violence directed specifically against civilians or civilian objects may amount to direct participation in hostilities.¹⁰⁸ For example, sniper attacks against civilians¹⁰⁹ and the bombardment or shelling of civilian villages or urban residential areas¹¹⁰ are likely to inflict death, injury, or destruction on persons and objects protected against direct attack and thus qualify as

104 During the expert meetings, it was held that the required threshold of harm would clearly be met where an act can reasonably be expected to cause material damage to objects or persons, namely death, injury or destruction (Report DPH 2005, pp. 30 f.; Background Doc. DPH 2004, pp. 5 f., 9 f., 28).

105 Accordingly, Section III of the Hague Regulations (entitled "Hostilities") prohibits the "attack or bombardment, by whatever means, of towns, villages, dwellings, or buildings which are undefended" (Art. 25 H IV R).

106 Article 49 [I] AP I. Attacks within the meaning of IHL (Art. 49 [I] AP I) should not be confused with attacks as understood in the context of crimes against humanity (see below N 167), or with armed attacks within the meaning of the *ius ad bellum*, both of which are beyond the scope of this study.

107 On belligerent nexus, see below Section V.3. For the relevant discussions on Draft Art. 44 AP I during the Diplomatic Conference of 1974-77, see CDDH/III/SR.11, pp. 93 f.

108 Needless to say, such attacks are invariably prohibited under IHL governing both international and non-international armed conflict. See, for example, Arts 48 AP I, 51 AP I, 13 AP II; *Customary IHL*, above N 7, Vol. I, Rule 1.

109 For the qualification of sniping as an attack within the meaning of IHL, see, e.g. ICTY, *Prosecutor v. Galic*, Case No. Case No. IT-98-29-T, Judgment of 5 December 2003, § 27 in conjunction with § 52.

110 ICTY, *Prosecutor v. Strugar*, Case No. IT-01-42-T, Judgment of 31 January 2005, §§ 282 f. in conjunction with § 289.

direct participation in hostilities regardless of any military harm to the opposing party to the conflict.

Acts that neither cause harm of a military nature nor inflict death, injury, or destruction on protected persons or objects cannot be equated with the use of means or methods of “warfare”¹¹¹ or, respectively, of “injuring the enemy”¹¹² as would be required for a qualification as hostilities. For example, the building of fences or roadblocks, the interruption of electricity, water, or food supplies, the appropriation of cars and fuel, the manipulation of computer networks, and the arrest or deportation of persons may have a serious impact on public security, health, and commerce, and may even be prohibited under IHL. However, they would not, in the absence of adverse military effects, cause the kind and degree of harm required to qualify as direct participation in hostilities.

c) Summary

For a specific act to reach the threshold of harm required to qualify as direct participation in hostilities, it must be likely to adversely affect the military operations or military capacity of a party to an armed conflict. In the absence of military harm, the threshold can also be reached where an act is likely to inflict death, injury, or destruction on persons or objects protected against direct attack. In both cases, acts reaching the required threshold of harm can only amount to direct participation in hostilities if they additionally satisfy the requirements of direct causation and belligerent nexus.

2. DIRECT CAUSATION

In order for the requirement of direct causation to be satisfied, there must be a direct causal link between a specific act and the harm likely to result either from that act, or from a coordinated military operation of which that act constitutes an integral part.

a) Conduct of hostilities, general war effort, and war sustaining activities

The treaty terminology of taking a “direct” part in hostilities, which describes civilian conduct entailing loss of protection against direct attack, implies that there can also be “indirect” participation in hostilities, which does not lead to such loss of protection. Indeed, the distinction between a person’s direct and indirect participation in hostilities corresponds, at the collective level of the opposing parties to an armed conflict, to that between the conduct of hostilities and other activities that are part of the general war effort or may be characterized as war-sustaining activities.¹¹³

Generally speaking, beyond the actual conduct of hostilities, the general war effort could be said to include all activities objectively contributing to the military defeat of the adversary (e.g. design, production and shipment of weapons and military equipment, construction or repair of roads, ports, airports, bridges, railways and other infrastructure outside the context of concrete military operations), while war-sustaining activities would additionally include political, economic or media activities supporting the general war effort (e.g. political propaganda, financial transactions, production of agricultural or non-military industrial goods).

113 According to *Commentary AP* (above N 10), § 1679, “to restrict this concept [i.e. of “direct participation in hostilities”] to combat and to active military operations would be too narrow, while extending it to the entire war effort would be too broad, as in modern warfare the whole population participates in the war effort to some extent, albeit indirectly. The population cannot on this ground be considered to be combatants [...]”. Similarly *ibid.*, *Commentary Art. 51 AP I*, § 1945. Affirmative also ICTY, *Prosecutor v. Strugar*, Case No. IT-01-42-A, Judgment of 17 July 2008, §§ 175-176. See also the distinction between taking part in hostilities” and “work of a military character” in Art. 15 [1] (b) GC IV. The position reflected in the *Commentary* corresponds to the prevailing opinion expressed during the expert meetings (Report DPH 2005, p. 21).

111 Art. 35 [1] AP I.

112 Art. 22 H IV R (Section II on Hostilities).

Admittedly, both the general war effort and war-sustaining activities may ultimately result in harm reaching the threshold required for a qualification as direct participation in hostilities. Some of these activities may even be indispensable to harming the adversary, such as providing finances, food and shelter to the armed forces and producing weapons and ammunition. However, unlike the conduct of hostilities, which is designed to cause – i.e. bring about the materialization of – the required harm, the general war effort and war sustaining activities also include activities that merely maintain or build up the capacity to cause such harm.¹¹⁴

b) Direct and indirect causation

For a specific act to qualify as “direct” rather than “indirect” participation in hostilities there must be a sufficiently close causal relation between the act and the resulting harm.¹¹⁵ Standards such as “indirect causation of harm”¹¹⁶ or “materially facilitating harm”¹¹⁷ are clearly too wide, as they would bring the entire war effort within the concept of direct participation in hostilities and, thus, would deprive large parts of the civilian population of their protection against direct attack.¹¹⁸ Instead, the distinction between direct and indirect participation in hostilities must be interpreted as corresponding to that between direct and indirect causation of harm.¹¹⁹

In the present context, direct causation should be understood as meaning that the harm in question must be brought about in one causal step. Therefore, individual conduct that merely builds up or maintains the capacity of a party to harm its adversary, or which otherwise only indirectly causes harm, is excluded from the concept of direct participation in hostilities. For example, imposing a regime of economic sanctions on a party to an armed conflict, depriving it of financial assets,¹²⁰ or providing its adversary with supplies and services (such as electricity, fuel, construction material, finances and financial services)¹²¹ would have a potentially important, but still indirect, impact on the military capacity or operations of that party. Other examples of indirect participation include scientific research and design,¹²² as well as production¹²³ and transport¹²⁴ of weapons and equipment unless carried out as an integral part of a specific military operation designed to directly cause the required threshold of harm. Likewise, although the recruitment and training of personnel is crucial to the military capacity of a party to the conflict, the causal link with the harm inflicted on the adversary will generally remain indirect.¹²⁵ Only where persons are specifically recruited and trained for the execution of a predetermined hostile act can such activities be regarded as an integral part of that act and, therefore, as direct participation in hostilities.¹²⁶

114 According to *Commentary AP* (above N 10), § 1944, “[...]direct’ participation means acts of war which by their nature or purpose are likely to cause actual harm to the personnel and equipment of the enemy armed forces”. Affirmative also ICTY, *Prosecutor v. Strugar, Appeal*, (above N 16), § 178. During the expert meetings, it was emphasized that “direct participation” in hostilities is neither synonymous with “involvement in” or “contribution to” hostilities, nor with “preparing” or “enabling” someone else to directly participate in hostilities, but essentially means that an individual is personally “taking part in the ongoing exercise of harming the enemy” (Report DPH 2004, p. 10) and personally carrying out hostile acts which are “part of” the hostilities (Report DPH 2005, pp. 21, 27, 30, 34).

115 According to *Commentary AP* (above N 10), § 4787: “The term direct participation in hostilities’ [...] implies that there is a sufficient causal relationship between the act of participation and its immediate consequences”. See also Report DPH 2005, pp. 30, 34 ff.

116 Report DPH 2005, p. 28.

117 Background Doc. DPH 2004, p. 27; Report DPH 2005, pp. 28, 34.

118 See also Background Doc. DPH 2004, pp. 27 f.; Report DPH 2004, pp. 11, 25; Report DPH 2005, pp. 28, 34.

119 According to *Commentary AP* (above N 10), § 1679: “Direct participation in hostilities implies a direct causal relationship between the activity engaged in and the harm done to the enemy at the time and the place where the activity takes place”.

120 Background Doc. DPH 2004, pp. 9 f.; Report DPH 2005, pp. 14 f.

121 Background Doc. DPH 2004, pp. 14 f.

122 Although, during the expert meetings, civilian scientists and weapons experts were generally regarded as protected against direct attack, some doubts were expressed as to whether this assessment could be upheld in extreme situations, namely where the expertise of a particular civilian was of very exceptional and potentially decisive value for the outcome of an armed conflict, such as the case of nuclear weapons experts during the Second World War (Report DPH 2006, pp. 48 f.).

123 During the expert meetings, there was general agreement that civilian workers in an ammunition factory are merely building up the capacity of a party to a conflict to harm its adversary, but do not directly cause harm themselves. Therefore, unlike civilians actually using the produced ammunition to cause harm to the adversary, such factory workers cannot be regarded as directly participating in hostilities (see Report DPH 2003, p. 2; Report DPH 2004, pp. 6 f.; Report DPH 2005, pp. 15, 21, 28 f., 34, 38; Report DPH 2006, pp. 48 ff., 60; Report DPH 2008, p. 63). The experts remained divided, however, as to whether the construction of improvised explosive devices (IED) or missiles by non-State actors could in certain circumstances exceed mere capacity-building and, in contrast to industrial weapons production, could become a measure preparatory to a concrete military operation (see Report DPH 2006, pp. 48 f., 60).

124 On the example of a civilian driver of an ammunition truck, see below Section V.2.(e).

125 Report DPH 2004, p. 10; Report DPH 2005, pp. 35 f. For dissenting views, see: Report DPH 2006, pp. 26, 65; Report DPH 2008, p. 51, 53 ff.

126 See below Sections V.2.(c) and V.1.1.

Moreover, for the requirement of direct causation to be met, it is neither necessary nor sufficient that the act be indispensable to the causation of harm.¹²⁷ For example, the financing or production of weapons and the provision of food to the armed forces may be indispensable, but not directly causal, to the subsequent infliction of harm. On the other hand, a person serving as one of several lookouts during an ambush would certainly be taking a direct part in hostilities although his contribution may not be indispensable to the causation of harm. Finally, it is not sufficient that the act and its consequences be connected through an uninterrupted causal chain of events. For example, the assembly and storing of an improvised explosive device (IED) in a workshop, or the purchase or smuggling of its components, may be connected with the resulting harm through an uninterrupted causal chain of events, but, unlike the planting and detonation of that device, do not cause that harm directly.

c) Direct causation in collective operations

The required standard of direct causation of harm must take into account the collective nature and complexity of contemporary military operations. For example, attacks carried out by unmanned aerial vehicles may simultaneously involve a number of persons, such as computer specialists operating the vehicle through remote control, individuals illuminating the target, aircraft crews collecting data, specialists controlling the firing of missiles, radio operators transmitting orders, and an overall commander.¹²⁸ While all of these persons are integral to that operation and directly participate in hostilities, only few of them carry out activities that, in isolation, could be said to directly cause the required threshold of harm. The standard of direct causation must therefore be interpreted to include conduct that causes harm only in conjunction with other acts. More precisely, where a specific act does not on its own directly cause the required threshold of harm, the requirement of direct causation would still be fulfilled where the act constitutes an integral part of a concrete and

coordinated tactical operation that directly causes such harm.¹²⁹ Examples of such acts would include, *inter alia*, the identification and marking of targets,¹³⁰ the analysis and transmission of tactical intelligence to attacking forces,¹³¹ and the instruction and assistance given to troops for the execution of a specific military operation.¹³²

d) Causal, temporal, and geographic proximity

The requirement of direct causation refers to a degree of *causal* proximity, which should not be confused with the merely indicative elements of *temporal* or *geographic* proximity. For example, it has become quite common for parties to armed conflicts to conduct hostilities through delayed (i.e. temporally remote) weapons-systems, such as mines, booby-traps and timer-controlled devices, as well as through remote-controlled (i.e. geographically remote) missiles, unmanned aircraft and computer network attacks. The causal relationship between the employment of such means and the ensuing harm remains direct regardless of temporal or geographical proximity. Conversely, although the delivery or preparation of food for combatant forces may occur in the same place and at the same time as the fighting, the causal link between such support activities and the causation of the required threshold of harm to the opposing party to a conflict remains indirect. Thus, while temporal or geographic proximity to the resulting harm may indicate that a specific act amounts to direct participation in hostilities, these factors would not be sufficient in the absence of direct causation.¹³³ As previously noted, where the required harm has not yet materialized, the element of direct causation must be determined by reference to the harm that can reasonably be expected to directly result from a concrete act or operation (“likely” harm).¹³⁴

129 Report DPH 2004, p. 5; Report DPH 2005, pp. 35 f.

130 Background Doc. DPH 2004, pp. 13; Report DPH 2004, p. 11, 25; Report DPH 2005, p. 31

131 Report DPH 2005, pp. 28, 31. See also the example provided in N 103, which was described as the equivalent of a “fire control system”.

132 Report DPH 2004, p. 10; Report DPH 2005, pp. 33, 35 f.

133 Report DPH 2005, p. 35.

134 See above Section V.1.

127 For the discussion during the expert meetings on “but for”-causation (i.e. the harm in question would not occur “but for” the act), see Report DPH 2004, pp. 11, 25; Report DPH 2005, pp. 28, 34.

128 Report DPH 2005, p. 35.

e) Selected examples

Driving an ammunition truck: The delivery by a civilian truck driver of ammunition to an active firing position at the front line would almost certainly have to be regarded as an integral part of ongoing combat operations and, therefore, as direct participation in hostilities.¹³⁵ Transporting ammunition from a factory to a port for further shipping to a storehouse in a conflict zone, on the other hand, is too remote from the use of that ammunition in specific military operations to cause the ensuing harm directly. Although the ammunition truck remains a legitimate military objective, the driving of the truck would not amount to direct participation in hostilities and would not deprive a civilian driver of protection against direct attack.¹³⁶ Therefore, any direct attack against the truck would have to take the probable death of the civilian driver into account in the proportionality assessment.¹³⁷

Voluntary human shields: The same logic applies to civilians attempting to shield a military objective by their presence as persons entitled to protection against direct attack (voluntary human shields). Where civilians voluntarily and deliberately position themselves to create a physical obstacle to military operations of a party to the conflict, they could directly cause the threshold of harm required for a qualification as direct participation in hostilities.¹³⁸ This scenario may become particularly relevant in ground operations, such as in urban environments, where civilians may attempt to give physical cover to fighting personnel supported by them or to inhibit the movement of opposing infantry troops.¹³⁹

135 Background Doc. DPH 2004, p. 28; Report DPH 2006, p. 48. A similar reasoning was recently adopted in domestic jurisprudence with regard to "driving a vehicle containing two surface-to-air missiles in both temporal and spatial proximity to both ongoing combat operations" (U.S. Military Commission, *USA v. Salim Ahmed Hamdan*, 19 December 2007, p. 6) and "driving the ammunition to the place from which it will be used for the purposes of hostilities" (Israel HCJ, *PCATI v. Israel*, above N 24, § 35).

136 Report DPH 2006, p. 48.

137 See also Report DPH 2005, pp. 32 f. Although it was recognized during the expert meetings that a civilian driver of an ammunition truck may have to face the risk of being mistaken for a member of the armed forces, it was also widely agreed that any civilian known to be present in a military objective had to be taken into account in the proportionality equation, unless and for such time as he or she directly participated in hostilities (Report DPH 2006, pp. 72 f.).

138 This view was generally shared during the expert meetings (Report DPH 2006, pp. 44 ff.; Report DPH 2008, pp. 70 ff.).

139 During the expert meetings, this scenario was illustrated by the concrete example of a woman who shielded two fighters with her billowing robe, allowing them to shoot at their adversary from behind her (Report DPH 2004, pp. 6 f.).

Conversely, in operations involving more powerful weaponry, such as artillery or air attacks, the presence of voluntary human shields often has no adverse impact on the capacity of the attacker to identify and destroy the shielded military objective. Instead, the presence of civilians around the targeted objective may shift the parameters of the proportionality assessment to the detriment of the attacker, thus increasing the probability that the expected incidental harm would have to be regarded as excessive in relation to the anticipated military advantage.¹⁴⁰ The very fact that voluntary human shields are in practice considered to pose a *legal* – rather than a *physical* – obstacle to military operations demonstrates that they are recognized as protected against direct attack or, in other words, that their conduct does not amount to direct participation in hostilities. Indeed, although the presence of voluntary human shields may eventually lead to the cancellation or suspension of an operation by the attacker, the causal relation between their conduct and the resulting harm remains indirect.¹⁴¹ Depending on the circumstances, it may also be questionable whether voluntary human shielding reaches the required threshold of harm.

The fact that some civilians voluntarily and deliberately abuse their legal entitlement to protection against direct attack in order to shield military objectives does not, without more, entail the loss of their protection and their liability to direct attack independently of the shielded objective.¹⁴² Nevertheless, through their voluntary presence near legitimate military objectives, voluntary human shields are particularly exposed to the dangers of military operations and, therefore, incur an increased risk of suffering incidental death or injury during attacks against those objectives.¹⁴³

140 See Art. 51 (5) (a) AP I and, for the customary nature of this rule in international and non-international armed conflict, *Customary IHL*, above N 7, Vol. I, Rule 14. For the relevant discussion during the expert meetings, see Report DPH 2004, pp. 6 f.; Report DPH 2006, pp. 44 ff.; Report DPH 2008, p. 70.

141 While there was general agreement during the expert meetings that involuntary human shields could not be regarded as directly participating in hostilities, the experts were unable to agree on the circumstances in which acting as a voluntary human shield would, or would not, amount to direct participation in hostilities. For an overview of the various positions, see Report DPH 2004, p. 6; Report DPH 2006, pp. 44 ff.; Report DPH 2008, pp. 70 ff.

142 See also Art. 51 (7) and (8) AP I, according to which any violation of the prohibition on using civilians as human shields does not release the attacker from his obligations with respect to the civilian population and individual civilians, including the obligation to take the required precautionary measures.

143 See Report DPH 2004, p. 7; Report DPH 2008, pp. 71 f.

f) Summary

The requirement of direct causation is satisfied if either the specific act in question, or a concrete and coordinated military operation of which that act constitutes an integral part, may reasonably be expected to directly – in one causal step – cause harm that reaches the required threshold. However, even acts meeting the requirements of direct causation and reaching the required threshold of harm can only amount to direct participation in hostilities if they additionally satisfy the third requirement, that of belligerent nexus.

3. BELLIGERENT NEXUS

In order to meet the requirement of belligerent nexus, an act must be specifically designed to directly cause the required threshold of harm in support of a party to the conflict and to the detriment of another.

a) Basic concept

Not every act that directly adversely affects the military operations or military capacity of a party to an armed conflict or directly inflicts death, injury, or destruction on persons and objects protected against direct attack necessarily amounts to direct participation in hostilities. As noted, the concept of direct participation in hostilities is restricted to specific acts that are so closely related to the hostilities conducted between parties to an armed conflict that they constitute an integral part of those hostilities.¹⁴⁴ Treaty IHL describes the term hostilities as the resort to means and methods of “injuring the enemy”,¹⁴⁵ and individual attacks as being directed “against the adversary”.¹⁴⁶ In other words, in order to amount to direct participation in hostilities, an act must not only be *objectively likely* to inflict harm that meets the first two criteria, but it must also be *specifically designed to do so in support of a party to an armed conflict and to the detriment of another* (belligerent nexus).¹⁴⁷

¹⁴⁴ See above Section IV.

¹⁴⁵ See Art. 22 H IV R (Section II on “Hostilities”).

¹⁴⁶ See, most notably, the definition of “attacks” as acts of violence “against the adversary...” (Art. 49 [1] AP I).

Report DPH 2005, pp. 22 f., 26, 40; Report DPH 2006, pp. 50 ff.

¹⁴⁷ The requirement of belligerent nexus is conceived more narrowly than the general nexus requirement developed in the jurisprudence of the ICTY and the ICTR as a precondition for the qualification of an act as

Conversely, armed violence which is not designed to harm a party to an armed conflict, or which is not designed to do so in support of another party, cannot amount to any form of “participation” in hostilities taking place between these parties.¹⁴⁸ Unless such violence reaches the threshold required to give rise to a separate armed conflict, it remains of a non-belligerent nature and, therefore, must be addressed through law enforcement measures.¹⁴⁹

b) Belligerent nexus and subjective intent

Belligerent nexus should be distinguished from concepts such as subjective intent¹⁵⁰ and hostile intent.¹⁵¹ These relate to the state of mind of the person concerned, whereas belligerent nexus relates to the objective purpose of the act. That purpose is expressed in the design of the act or operation and does not depend on the mindset of every participating individual.¹⁵² As an objective criterion linked to the act alone, belligerent nexus is generally not influenced by factors such as personal distress or preferences, or by

a war crime (see: ICTY, *Prosecutor v. Kunarac et al.*, Case No. IT-96-23, Judgment of 12 June 2002 (Appeals Chamber), § 58; ICTR, *Prosecutor v. Rutaganda*, Case No. ICTR-96-3, Judgment of 26 May 2003 (Appeals Chamber), § 570). While the general nexus requirement refers to the relation between an act

and a situation of armed conflict as a whole, the requirement of belligerent nexus refers to the relation between an act and the conduct of hostilities between the parties to an armed conflict. During the expert meetings, it was generally agreed that no conduct lacking a sufficient nexus to the hostilities could qualify as direct participation in such hostilities. See Report, DPH 2005, p. 25 and, more generally, Background Doc. DPH 2004, pp. 10, 25; Background Doc. DPH 2005, WS II-III, p. 8; Report DPH 2005, pp. 9 f., 22 ff., 27, 34.

¹⁴⁸ Report DPH 2006, pp. 51 f.

¹⁴⁹ The same applies, for example, to armed violence carried out by independent armed groups in international armed conflict (see also above, NN 24-27 and accompanying text). During the expert meetings there was general agreement regarding the importance of distinguishing, in contexts of armed conflict, between law enforcement operations and the conduct of hostilities. See Report DPH 2005, pp. 10 f.; Report DPH 2006, pp. 52 f.; Report DPH 2008, p. 49, 54, 62 ff.

¹⁵⁰ During the expert meetings, there was almost unanimous agreement that the subjective motives driving a civilian to carry out a specific act cannot be reliably determined during the conduct of military operations and, therefore, cannot serve as a clear and operable criterion for “split second” targeting decisions. See Report DPH 2005, pp. 9, 26, 34, 66 f.; Report DPH 2006, pp. 50 f.; Report DPH 2008, p. 66.

¹⁵¹ During the expert meetings, there was agreement that hostile intent is not a term of IHL, but a technical term used in rules of engagement (ROE) drafted under national law. ROE constitute national command and control instruments designed to provide guidance to armed personnel as to their conduct in specific contexts. As such, ROE do not necessarily reflect the precise content of IHL and cannot be used to define the concept of direct participation in hostilities. For example, particular ROE may for political or operational reasons prohibit the use of lethal force in response to certain activities, even though they amount to direct participation in hostilities under IHL. Conversely, ROE may contain rules on the use of lethal force in individual self-defence against violent acts that do not amount to direct participation in hostilities. Therefore, it was generally regarded as unhelpful, confusing or even dangerous to refer to hostile intent for the purpose of defining direct participation in hostilities. See Report DPH 2005, p. 37.

¹⁵² Report DPH 2005, pp. 22 f., 26, 40; Report DPH 2006, pp. 50 f.

the mental ability or willingness of persons to assume responsibility for their conduct. Accordingly, even civilians forced to directly participate in hostilities¹⁵³ or children below the lawful recruitment age¹⁵⁴ may lose protection against direct attack.

Only in exceptional situations could the mental state of civilians call into question the belligerent nexus of their conduct. This scenario could occur, most notably, when civilians are totally unaware of the role they are playing in the conduct of hostilities (e.g. a driver unaware that he is transporting a remote-controlled bomb) or when they are completely deprived of their physical freedom of action (e.g. when they are involuntary human shields physically coerced into providing cover in close combat). Civilians in such extreme circumstances cannot be regarded as performing an action (i.e. as *doing something*) in any meaningful sense and, therefore, remain protected against direct attack despite the belligerent nexus of the military operation in which they are being instrumentalized. As a result, these civilians would have to be taken into account in the proportionality assessment during any military operation likely to inflict incidental harm on them.

c) Practical relevance of belligerent nexus

Many activities during armed conflict lack a belligerent nexus even though they cause a considerable level of harm. For example, the exchange of fire between police and hostage-takers during an ordinary bank robbery,¹⁵⁵ violent crimes committed for reasons unrelated to the conflict, and the stealing of military equipment for private use,¹⁵⁶ may cause the required

¹⁵³ It should be noted, however, that civilians protected under the Fourth Geneva Convention may not be compelled to do work “directly related to the conduct of military operations” or to serve in the armed or auxiliary forces of the enemy (Arts 40 [2] and 51 [I] GC IV), and that civilian medical and religious personnel may not be compelled to carry out tasks which are not compatible with their humanitarian mission (Art. 15 [3] AP I; Art. 9 [I] AP II).

¹⁵⁴ Therefore, all parties to an armed conflict are obliged to do everything feasible to ensure that children below the age of 15 years do not directly participate in hostilities and, in particular, to refrain from recruiting them into their armed forces or organized armed groups (Arts 77 [2], AP I; 4 [3] (c) AP II; *Customary IHL*, above N 7, Vol. I, Rule 137). Of course, as soon as children regain protection against direct attack, they also regain the special protection afforded to children under IHL (Arts 77 [3] AP I; 4 [3] (d) AP II).

¹⁵⁵ See also Report DPH 2005, pp. 9, 11.
¹⁵⁶ Report DPH 2004, p. 25.

threshold of harm, but are not specifically designed to support a party to the conflict by harming another. Similarly, the military operations of a party to a conflict can be directly and adversely affected when roads leading to a strategically important area are blocked by large groups of refugees or other fleeing civilians. However, the conduct of these civilians is not specifically designed to support one party to the conflict by causing harm to another and, therefore, lacks belligerent nexus. This analysis would change, of course, if civilians block a road in order to facilitate the withdrawal of insurgent forces by delaying the arrival of governmental armed forces (or vice versa). When distinguishing between the activities that do and those that do not amount to direct participation in hostilities, the criterion of belligerent nexus is of particular importance in the following four situations:

Individual self-defence: The causation of harm in individual self-defence or defence of others against violence prohibited under IHL lacks belligerent nexus.¹⁵⁷ For example, although the use of force by civilians to defend themselves against unlawful attack or looting, rape, and murder by marauding soldiers may cause the required threshold of harm, its purpose clearly is not to support a party to the conflict against another. If individual self-defence against prohibited violence were to entail loss of protection against direct attack, this would have the absurd consequence of legitimizing a previously unlawful attack. Therefore, the use of necessary and proportionate force in such situations cannot be regarded as direct participation in hostilities.¹⁵⁸

Exercise of power or authority over persons or territory: IHL makes a basic distinction between the conduct of hostilities and the exercise of power or authority over persons or territory. As a result, the infliction of death, injury, or destruction by civilians on persons or objects that have fallen into their “hands”¹⁵⁹ or “power”¹⁶⁰ within the meaning of IHL does not, without more, constitute part of the hostilities.

¹⁵⁷ This was also the prevailing opinion during the expert meetings (see Report DPH 2003, p. 6; Background Doc. DPH 2004, pp. 14, 31 f.).

¹⁵⁸ The use of force by individuals in defence of self or others is an issue distinct from the use of force by States in self-defence against an armed attack, which is governed by the *jus ad bellum* and is beyond the scope of this study.

¹⁵⁹ E.g. Art. 4 GC IV.

¹⁶⁰ E.g. Art. 5 GC III; Art. 75 [I] AP I.

For example, the use of armed force by civilian authorities to suppress riots and other forms of civil unrest,¹⁶¹ prevent looting, or otherwise maintain law and order in a conflict area may cause death, injury, or destruction, but generally it would not constitute part of the hostilities conducted between parties to an armed conflict.¹⁶² Likewise, once military personnel have been captured (and, thus, are *hors de combat*), the suppression of riots and prevention of escapes¹⁶³ or the lawful execution of death sentences¹⁶⁴ is not designed to directly cause military harm to the opposing party to the conflict and, therefore, lacks belligerent nexus.¹⁶⁵

Excluded from the concept of direct participation in hostilities is not only the lawful exercise of administrative, judicial or disciplinary authority on behalf of a party to the conflict, but even the perpetration of war crimes or other violations of IHL outside the conduct of hostilities. Thus, while collective punishment, hostage-taking, and the ill-treatment and summary execution of persons in physical custody are invariably prohibited by IHL, they are not part of the conduct of hostilities.¹⁶⁶ Such conduct may constitute a domestic or international crime and permit the lawful use of armed force against the perpetrators as a matter of law enforcement or defence of self or others.¹⁶⁷ Loss of protection against direct attack within the meaning of IHL, however, is not a sanction for criminal behaviour but a consequence of military necessity in the conduct of hostilities.¹⁶⁸

Civil unrest: During armed conflict, political demonstrations, riots, and other forms of civil unrest are often marked by high levels of violence and are sometimes responded to with military force. In fact, civil unrest may well result in death, injury and destruction and, ultimately, may even benefit the general war effort of a party to the conflict by undermining the territorial authority and control of another party through political pressure, economic insecurity, destruction and disorder. It is therefore important to distinguish direct participation in hostilities – which is specifically designed to support a party to an armed conflict against another – from violent forms of civil unrest, the primary purpose of which is to express dissatisfaction with the territorial or detaining authorities.¹⁶⁹

Inter-civilian violence: Similarly, in order to become part of the conduct of hostilities, use of force by civilians against other civilians, even if widespread, must be specifically designed to support a party to an armed conflict in its military confrontation with another.¹⁷⁰ This would not be the case where civilians merely take advantage of a breakdown of law and order to commit violent crimes.¹⁷¹ Belligerent nexus is most likely to exist where inter-civilian violence is motivated by the same political disputes or ethnic hatred that underlie the surrounding armed conflict and where it causes harm of a specifically military nature.

d) Practical determination of belligerent nexus

The task of determining the belligerent nexus of an act can pose considerable practical difficulties. For example, in many armed conflicts, gangsters and pirates operate in a grey zone where it is difficult to distinguish hostilities from violent crime unrelated to, or merely facilitated by, the armed conflict. These determinations must be based on the information reasonably available to the person called on to make the determination, but they must always be deduced from objectively verifiable factors.¹⁷² In practice, the decisive question should be whether the conduct

¹⁶¹ On the belligerent nexus of civil unrest, see below N 169 and accompanying text.

¹⁶² Treaty IHL expressly confirms the law enforcement role, for example, of occupying powers (Art. 43 H I V R) and States party to a non-international armed conflict (Art. 3 [1] A P II).

¹⁶³ E.g. Art. 42 G C III.

¹⁶⁴ E.g. Arts 100 and 101 G C III.

¹⁶⁵ See also above N 99 and accompanying text.

¹⁶⁶ See, for example, Arts 3 G C I V; 32 G C IV; 75 [2] A P I. For the divergence of opinions expressed during the expert meetings on the qualification of hostage-taking as direct participation in hostilities, see Report DPH 2004, p. 4; Report DPH 2005, p. 11; Report DPH 2006, pp. 43 f.; Report DPH 2008, pp. 67 ff.

¹⁶⁷ The concept of "attack" in the context of crimes against humanity does not necessarily denote conduct amounting to direct participation in hostilities under IHL. As explained by the ICTY "[t]he term 'attack' in the context of a crime against humanity carries a slightly different meaning than in the laws of war. [It] is not limited to the conduct of hostilities. It may also encompass situations of mistreatment of persons taking no active part in hostilities, such as someone in detention" (ICTY, *Prosecutor v. Kunarac et al.*, Case No. IT-96-23, Judgment of 22 February 2001 (Trial Chamber), § 416, confirmed by the Appeals Chamber in its Judgment in the same case of 12 June 2002, § 89). See also Report DPH 2006, pp. 42 f.

¹⁶⁸ For the relevant discussion during the expert meetings, see Report DPH 2008, pp. 63–65.

¹⁶⁹ See also Report DPH 2004, p. 4; Report DPH 2008, p. 67.

¹⁷⁰ See also Report DPH 2004, p. 4; Report DPH 2005, pp. 8, 11.

¹⁷¹ With regard to the existence of a general nexus between civilian violence and the surrounding armed conflict, a similar conclusion was reached in ICTR, *Prosecutor v. Rutaganda* (above N 147), § 570.

¹⁷² Report DPH 2005, pp. 9 f., 22, 26, 28, 34, 40.

of a civilian, in conjunction with the circumstances prevailing at the relevant time and place, can reasonably be perceived as an act designed to support one party to the conflict by directly causing the required threshold of harm to another party. As the determination of belligerent nexus may lead to a civilian's loss of protection against direct attack, all feasible precautions must be taken to prevent erroneous or arbitrary targeting and, in situations of doubt, the person concerned must be presumed to be protected against direct attack.¹⁷³

e) Summary

In order to meet the requirement of belligerent nexus, an act must be specifically designed to directly cause the required threshold of harm in support of a party to an armed conflict and to the detriment of another. As a general rule, harm caused (a) in individual self-defence or defence of others against violence prohibited under IHL, (b) in exercising power or authority over persons or territory, (c) as part of civil unrest against such authority, or (d) during inter-civilian violence lacks the belligerent nexus required for a qualification as direct participation in hostilities.

4. CONCLUSION

Applied in conjunction, the three requirements of *threshold of harm*, *direct causation* and *belligerent nexus* permit a reliable distinction between activities amounting to direct participation in hostilities and activities which, although occurring in the context of an armed conflict, are not part of the conduct of hostilities and, therefore, do not entail loss of protection against direct attack.¹⁷⁴ Even where a specific act amounts to direct participation in hostilities, however, the kind and degree of force used in response must comply with the rules and principles of IHL and other applicable international law.¹⁷⁵

VI. BEGINNING AND END OF DIRECT PARTICIPATION IN HOSTILITIES

Measures preparatory to the execution of a specific act of direct participation in hostilities, as well as the deployment to and the return from the location of its execution, constitute an integral part of that act.

As civilians lose protection against direct attack “for such time” as they directly participate in hostilities, the beginning and end of specific acts amounting to direct participation in hostilities must be determined with utmost care.¹⁷⁶ Without any doubt, the concept of direct participation in hostilities includes the immediate execution phase of a specific act meeting the three criteria of *threshold of harm*, *direct causation* and *belligerent nexus*. It may also include measures preparatory to the execution of such an act, as well as the deployment to and return from the location of its execution, where they constitute an integral part of such a specific act or operation.¹⁷⁷

I. PREPARATORY MEASURES

Whether a preparatory measure amounts to direct participation in hostilities depends on a multitude of situational factors that cannot be comprehensively described in abstract terms.¹⁷⁸ In essence, preparatory measures amounting to direct participation in hostilities correspond to what treaty IHL describes as “military operation[s] preparatory to an attack”.¹⁷⁹ They are of a specifically military nature and so closely linked

¹⁷⁶ See also the discussion in Report DPH 2006, pp. 54–63. On the temporal scope of the loss of protection, see below Section VII.

¹⁷⁷ See also the related discussion on direct causation in collective operations, above Section V.2. (c).

¹⁷⁸ For the relevant discussions during the expert meetings, see: Background Doc. DPH 2004, pp. 7, 10, 13, 21; Background Doc. DPH 2005, WS VI-VII, p. 10; Report DPH 2005, p. 19; Report DPH 2006, pp. 56–63.

¹⁷⁹ Regarding the distinction of preparatory measures, deployments and withdrawals entailing loss of protection against direct attack from preparations, attempts and other forms of involvement entailing criminal responsibility, see Report DPH 2006, pp. 57 ff.

¹⁷⁹ Art. 44 [3] A.P.I.

¹⁷³ See below Section VIII.

¹⁷⁴ The use of force in response to activities not fulfilling these requirements must be governed by the standards of law enforcement and of individual self-defence, taking into account the threat to be addressed and the nature of the surrounding circumstances.

¹⁷⁵ See below Section IX.

to the subsequent execution of a specific hostile act that they already constitute an integral part of that act. Conversely, the preparation of a general campaign of unspecified operations would not qualify as direct participation in hostilities. In line with the distinction between direct and indirect participation in hostilities, it could be said that preparatory measures *aiming to carry out a specific hostile act* qualify as direct participation in hostilities, whereas preparatory measures *aiming to establish the general capacity to carry out unspecified hostile acts* do not.¹⁸⁰

It is neither necessary nor sufficient for a qualification as direct participation that a preparatory measure occur immediately before (temporal proximity) or in close geographical proximity to the execution of a specific hostile act or that it be indispensable for its execution. For example, the loading of bombs onto an airplane for a direct attack on military objectives in an area of hostilities constitutes a measure preparatory to a specific hostile act and, therefore, qualifies as direct participation in hostilities. This is the case even if the operation will not be carried out until the next day, if the target will be selected only during the operation, and if great distance separates the preparatory measure from the location of the subsequent attack. Conversely, transporting bombs from a factory to an airfield storage place and then to an airplane for shipment to another storehouse in the conflict zone for unspecified use in the future would constitute a general preparatory measure qualifying as mere indirect participation.

Similarly, if carried out with a view to the execution of a specific hostile act, all of the following would almost certainly constitute preparatory measures amounting to direct participation in hostilities: equipment, instruction, and transport of personnel; gathering of intelligence; and preparation, transport, and positioning of weapons and equipment. Examples of general preparation not entailing loss of protection against direct attack would commonly include purchase, production, smuggling and hiding of weapons; general recruitment and training of personnel; and

financial, administrative or political support to armed actors.¹⁸¹ It should be reiterated that these examples can only illustrate the principles based on which the necessary distinctions ought to be made and cannot replace a careful assessment of the totality of the circumstances prevailing in the concrete context and at the time and place of action.¹⁸²

2. DEPLOYMENT AND RETURN

Where the execution of a specific act of direct participation in hostilities requires prior geographic deployment, such deployment already constitutes an integral part of the act in question.¹⁸³ Likewise, as long as the return from the execution of a hostile act remains an integral part of the preceding operation, it constitutes a military withdrawal and should not be confused with surrender or otherwise becoming *hors de combat*.¹⁸⁴ A deployment amounting to direct participation in hostilities begins only once the deploying individual undertakes a physical displacement with a view to carrying out a specific operation. The return from the execution of a specific hostile act ends once the individual in question has physically separated from the operation, for example by laying down, storing or hiding the weapons or other equipment used and resuming activities distinct from that operation.

¹⁸¹ On the qualification of such activities as direct participation in hostilities see also above Section V.2.(e)(b).

¹⁸² During the expert meetings, it was emphasized that the distinction between preparatory measures that do and, respectively, do not qualify as direct participation in hostilities should be made with utmost care so as to ensure that loss of civilian protection would not be triggered by acts too remote from the actual fighting. In order for the word "direct" in the phrase direct participation in hostilities to retain any meaning, civilians should be liable to direct attack exclusively during recognizable and proximate preparations, such as the loading of a gun, and during deployments in the framework of a specific military operation (Report DPH 2006, pp. 55, 60 f.).

¹⁸³ See *Commentary AP* (above N 10), §§ 1679, 1943, 4788, which recalls that several delegations to the Diplomatic Conference of 1974-77 had indicated that the concept of hostilities included preparations for combat and return from combat. In their responses to the 2004 Questionnaire, a majority of experts considered that deployment to the geographic location of a hostile act should already qualify as direct participation in hostilities and, though more hesitantly, tended towards the same conclusion with regard to the return from that location. See Background Doc. DPH 2004, pp. 7 (I, 1.3.), 10 (I, 2.4.), 13 (I, 3.4.), 20 (I, 6.4.). See also Report DPH 2005, pp. 65 f.

¹⁸⁴ While this was also the prevailing opinion during the expert meetings (see Report DPH 2005, p. 66) some experts feared that the continued loss of protection after the execution of a specific hostile act invited arbitrary and unnecessary targeting (Report DPH 2006, pp. 56 f., 61 ff.).

Whether a particular individual is engaged in deployment to or return from the execution of a specific hostile act depends on a multitude of situational factors, which cannot be comprehensively described in abstract terms. The decisive criterion is that both the deployment and return be carried out as an integral part of a specific act amounting to direct participation in hostilities. That determination must be made with utmost care and based on a reasonable evaluation of the prevailing circumstances.¹⁸⁵ Where the execution of a hostile act does not require geographic displacement, as may be the case with computer network attacks or remote-controlled weapons systems, the duration of direct participation in hostilities will be restricted to the immediate execution of the act and preparatory measures forming an integral part of that act.

3. CONCLUSION

Where preparatory measures and geographical deployments or withdrawals constitute an integral part of a specific act or operation amounting to direct participation in hostilities, they extend the beginning and end of the act or operation beyond the phase of its immediate execution.

C. MODALITIES GOVERNING THE LOSS OF PROTECTION

Under customary and treaty IHL, civilians lose protection against direct attack either by directly participating in hostilities or by ceasing to be civilians altogether, namely by becoming members of State armed forces or organized armed groups belonging to a party to an armed conflict.¹⁸⁶ In view of the serious consequences for the individuals concerned, the present chapter endeavours to clarify the precise modalities that govern such loss of protection under IHL. The following sections examine the temporal scope of the loss of protection against direct attack (VII), the precautions and presumptions in situations of doubt (VIII), the rules and principles governing the use of force against legitimate military targets (IX), and the consequences of regaining protection against direct attack (X).

In line with the aim of the Interpretive Guidance, this chapter will focus on examining loss of protection primarily in case of direct participation in hostilities (civilians), but also in case of continuous combat function (members of organized armed groups), as the latter concept is intrinsically linked to the concept of direct participation in hostilities.¹⁸⁷ It will not, or only marginally, address the loss of protection in case of membership in State armed forces, which largely depends on criteria unrelated to direct participation in hostilities, such as formal recruitment, incorporation, discharge or retirement under domestic law.¹⁸⁸ Subject to contrary provisions of IHL, this does not exclude the applicability of the conclusions reached in Sections VII to X, *mutatis mutandis*, to members of State armed forces as well.

¹⁸⁶ Regarding the terminology of “loss of protection against direct attacks” used in the Interpretive Guidance see above N 6.

¹⁸⁷ On the concept of continuous combat function, see above Section II.3.(b).

¹⁸⁸ On the applicability of the criterion of continuous combat function for the determination of membership in irregularly constituted militia, volunteer corps and resistance movements belonging to States, see above Section I.2.(c).

VII. TEMPORAL SCOPE OF THE LOSS OF PROTECTION

Civilians lose protection against direct attack for the duration of each specific act amounting to direct participation in hostilities, whereas members of organized armed groups belonging to a non-State party to an armed conflict cease to be civilians (see above II), and lose protection against direct attack, for as long as they assume their continuous combat function.

1. CIVILIANS

According to treaty and customary IHL applicable in international and non-international armed conflict, civilians enjoy protection against direct attack “unless and for such time” as they take a direct part in hostilities.¹⁸⁹ Civilians directly participating in hostilities do not cease to be part of the civilian population, but their protection against direct attack is temporarily suspended. The phrase “unless and for such time” clarifies that such suspension of protection lasts exactly as long as the corresponding civilian engagement in direct participation in hostilities.¹⁹⁰ This necessarily entails that civilians lose and regain protection against direct attack in parallel with the intervals of their engagement in direct participation in hostilities (so-called “revolving door” of civilian protection).

The “revolving door” of civilian protection is an integral part, not a malfunction, of IHL. It prevents attacks on civilians who do not, at the time, represent a military threat. In contrast to members of organized armed groups, whose continuous function it is to conduct hostilities on behalf of a party to the conflict, the behaviour of individual civilians depends on a multitude of constantly changing circumstances and,

therefore, is very difficult to anticipate. Even the fact that a civilian has repeatedly taken a direct part in hostilities, either voluntarily or under pressure, does not allow a reliable prediction as to future conduct.¹⁹¹ As the concept of direct participation in hostilities refers to specific hostile acts, IHL restores the civilian’s protection against direct attack each time his or her engagement in a hostile act ends.¹⁹² Until the civilian in question again engages in a specific act of direct participation in hostilities, the use of force against him or her must comply with the standards of law enforcement or individual self-defence.

Although the mechanism of the “revolving door” of protection may make it more difficult for the opposing armed forces or organized armed groups to respond effectively to the direct participation of civilians in hostilities, it remains necessary to protect the civilian population from erroneous or arbitrary attack and must be acceptable for the operating forces or groups as long as such participation occurs on a merely spontaneous, unorganized or sporadic basis.

2. MEMBERS OF ORGANIZED ARMED GROUPS

Members of organized armed groups belonging to a non-State party to the conflict cease to be civilians for as long as they remain members by virtue of their continuous combat function.¹⁹³ Formally, therefore, they no longer benefit from the protection provided to civilians “unless and for such time” as they take a direct part in hostilities. Indeed, the restriction of loss of protection to the duration of specific hostile acts was designed to respond to spontaneous, sporadic or unorganized hostile acts by civilians

191 Regarding the practical impossibility of reliably predicting the future conduct of a civilian, see also Report DPH 2006, pp. 66 ff.

192 According to *Commentary AP* (above N 10), § 4789: “If a civilian participates directly in hostilities, it is clear that he will not enjoy any protection against attacks for as long as his participation lasts. Thereafter, as he no longer presents any danger for the adversary, he may not be attacked”. See also the description of direct participation in hostilities as potentially “intermittent and discontinuous” in ICTY, *Prosecutor v. Strugar*, Appeal, (above N 16), § 178. Although, during the expert meetings, the mechanism of the revolving door of protection gave rise to some controversy, the prevailing view was that, under the texts of Art. 3 [1] GC I-IV and the Additional Protocols, continuous loss of civilian protection could not be based on recurrent acts by individual civilians, but exclusively on the concept of membership in State armed forces or in an organized armed group belonging to a non-State party to the conflict. See Report DPH 2004, pp. 22 f.; Report DPH 2005, pp. 63 f.; Report DPH 2006, pp. 64-68; Report DPH 2008, pp. 33-44.

193 On the mutual exclusivity of the concepts of civilian and organized armed group, see above Section II.1. On the concept of continuous combat function, see above Section II.3.(b).

189 Arts 51 [3] AP I; 13 [3] AP II; *Customary IHL*, above N 7, Vol. I, Rule 6. The customary nature of this rule was affirmed also in ICTY, *Prosecutor v. Blaskic*, Case No. IT-95-14-A, Judgment of 29 July 2004, § 157, with references to earlier case law. For recent domestic jurisprudence expressly accepting the customary nature of Art. 51 [3] AP I, including the phrase “for such time as” see: Israel HCI, *PCATF v. Israel*, above N 24, § 30.

190 On the beginning and end of direct participation in hostilities see above Section VI.

and cannot be applied to organized armed groups. It would provide members of such groups with a significant operational advantage over members of State armed forces, who can be attacked on a continuous basis. This imbalance would encourage organized armed groups to operate as farmers by day and fighters by night. In the long run, the confidence of the disadvantaged party in the capability of IHL to regulate the conduct of hostilities satisfactorily would be undermined, with serious consequences ranging from excessively liberal interpretations of IHL to outright disrespect for the protections it affords.¹⁹⁴

Instead, where individuals go beyond spontaneous, sporadic, or unorganized direct participation in hostilities and become members of an organized armed group belonging to a party to the conflict, IHL deprives them of protection against direct attack for as long as they remain members of that group.¹⁹⁵ In other words, the “revolving door” of protection starts to operate based on membership.¹⁹⁶ As stated earlier, membership in an organized armed group begins in the moment when a civilian starts *de facto* to assume a continuous combat function for the group, and lasts until he or she ceases to assume such function.¹⁹⁷ Disengagement from an organized armed group need not be openly declared; it can also be expressed through conclusive behaviour, such as a lasting physical distancing from the group and reintegration into civilian life or the permanent resumption of an exclusively non-combat function (e.g., political or administrative activities). In practice, assumption of, or disengagement from, a continuous combat function depends on criteria that may vary with the political, cultural, and military context.¹⁹⁸

That determination must therefore be made in good faith and based on a reasonable assessment of the prevailing circumstances, presuming entitlement to civilian protection in case of doubt.¹⁹⁹

3. CONCLUSION

Under customary and treaty IHL, civilians directly participating in hostilities, as well as persons assuming a continuous combat function for an organized armed group belonging to a party to the conflict, lose their entitlement to protection against direct attack. As far as the temporal scope of the loss of protection is concerned, a clear distinction must be made between civilians and organized armed actors. While civilians lose their protection for the duration of each specific act amounting to direct participation in hostilities, members of organized armed groups belonging to a party to the conflict are no longer civilians and, therefore, lose protection against direct attack for the duration of their membership, that is to say, for as long as they assume their continuous combat function.

¹⁹⁴ Report DPH 2005, p. 49; Report DPH 2006, p. 65.

¹⁹⁵ According to *Commentary AP* (above N 10), § 4789: “Those who belong to armed forces or armed groups may be attacked at any time”. See also Expert Paper DPH 2004 (Prof. M. Bothe). Protection against direct attack is restored where members of armed groups fall *hors de combat* as a result of capture, surrender, wounds or any other cause (Art. 3 [I] GC I-IV. See also Art. 41 AP I).

¹⁹⁶ During the expert meetings, this widely supported compromise was described as a “functional membership approach”. For an overview of the discussions, see Report DPH 2003, p. 7; Background Doc. DPH 2004, pp. 34 ff.; Report DPH 2004, pp. 22 f.; Report DPH 2005, pp. 49, 59-65; 82 ff.; Report DPH 2006, pp. 29 ff., 65 f.

¹⁹⁷ See above Section II.3. See also Report DPH 2005, p. 59.

¹⁹⁸ See also above Section II.3. During the expert meetings, it was emphasized that the question of whether affirmative disengagement had taken place must be determined based on the concrete circumstances (Report DPH 2005, p. 63). On the precautions and presumptions to be observed in situations of doubt, see below Section VIII.

¹⁹⁹ During the expert meetings, it was repeatedly pointed out that, while the “revolving door” of protection was part of the rule on civilian direct participation in hostilities expressed in Arts 51 [3] AP I and 13 [3] AP II, the practical distinction between members of organized armed groups and civilians was very difficult. During reactive operations carried out in response to an attack, the operating forces often lacked sufficient intelligence and had to rely on assumptions that were made based on individual conduct. Therefore, such operations would generally be restricted to the duration of the concrete hostile acts to which they responded. Conversely, *proactive* operations initiated by the armed forces based on solid intelligence regarding the function of a person within an organized armed group could also be carried out at a moment when the targeted persons were not directly participating in hostilities (see Report DPH 2006, pp. 56 f.).

VIII. PRECAUTIONS AND PRESUMPTIONS IN SITUATIONS OF DOUBT

All feasible precautions must be taken in determining whether a person is a civilian and, if so, whether that civilian is directly participating in hostilities. In case of doubt, the person must be presumed to be protected against direct attack.

One of the main practical problems caused by various degrees of civilian participation in hostilities is that of doubt as to the identity of the adversary. For example, in many counter-insurgency operations, armed forces are constantly confronted with individuals adopting a more or less hostile attitude. The difficulty for such forces is to distinguish reliably between members of organized armed groups belonging to an opposing party to the conflict, civilians directly participating in hostilities on a spontaneous, sporadic, or unorganized basis, and civilians who may or may not be providing support to the adversary, but who do not, at the time, directly participate in hostilities. To avoid the erroneous or arbitrary targeting of civilians entitled to protection against direct attack, there must be clarity as to the precautions to be taken and the presumptions to be observed in situations of doubt.

1. THE REQUIREMENT OF FEASIBLE PRECAUTIONS

Prior to any attack, all feasible precautions must be taken to verify that targeted persons are legitimate military targets.²⁰⁰ Once an attack has commenced, those responsible must cancel or suspend the attack if it becomes apparent that the target is not a legitimate military target.²⁰¹ Before and during any attack, everything feasible must be done to determine whether the targeted person is a civilian and, if so, whether he or she is directly participating in hostilities. As soon as it becomes

apparent that the targeted person is entitled to civilian protection, those responsible must refrain from launching the attack, or cancel or suspend it if it is already underway. This determination must be made in good faith and in view of all information that can be said to be reasonably available in the specific situation.²⁰² As stated in treaty IHL, “[f]easible precautions are those precautions which are practicable or practically possible taking into account all circumstances ruling at the time, including humanitarian and military considerations”.²⁰³ In addition, a direct attack against a civilian must be cancelled or suspended if he or she becomes *hors de combat*.²⁰⁴

2. PRESUMPTION OF CIVILIAN PROTECTION

For the purposes of the principle of distinction, IHL distinguishes between two generic categories of persons: civilians and members of the armed forces of the parties to the conflict. Members of State armed forces (except medical and religious personnel) or organized armed groups are generally regarded as legitimate military targets unless they surrender or otherwise become *hors de combat*. Civilians are generally protected against direct attack unless and for such time as they directly participate in hostilities. For each category, the general rule applies until the requirements for an exception are fulfilled.

Consequently, in case of doubt as to whether a specific civilian conduct qualifies as direct participation in hostilities, it must be presumed that the general rule of civilian protection applies and that this conduct does not

202 Report DPHI 2006, p. 70 ff.

203 Arts 3 [4] CCW Protocol II (1980); 1 [5] CCW Protocol III (1980); 3 [10] CCW Amended Protocol II (1996). See also the French text of Art. 57 AP I (“faire tout ce qui est pratiquement possible”).

204 Apart from the determination as to whether a civilian is directly participating in hostilities, the principle of precaution in attack also requires that all feasible precautions be taken to avoid and in any event minimize incidental loss of civilian life, injury to civilians and damage to civilian objects. It also obliges those responsible to refrain from launching, to cancel or suspend attacks that are likely to result in incidental harm that would be “excessive” compared to the anticipated military advantage (see Art. 57 [2] (a) (ii); Art. 57 [2] (a) (iii) and Art. 57 [2] (b) AP I and, with regard to the customary nature of these rules in both international and non-international armed conflict, *Customary IHL*, above N 7, Vol. I, Rules 17, 18 and 19).

200 Art. 57 [2] (a) (i) AP I. According to *Customary IHL*, above N 7, Vol. I, Rule 16, this rule has attained customary nature in both international and non-international armed conflict.

201 Art. 57 [2] (b) AP I. According to *Customary IHL*, above N 7, Vol. I, Rule 19, this rule has attained customary nature in both international and non-international armed conflict.

amount to direct participation in hostilities.²⁰⁵ The presumption of civilian protection applies, *a fortiori*, in case of doubt as to whether a person has become a member of an organized armed group belonging to a party to the conflict.²⁰⁶ Obviously, the standard of doubt applicable to targeting decisions cannot be compared to the strict standard of doubt applicable in criminal proceedings but rather must reflect the level of certainty that can reasonably be achieved in the circumstances. In practice, this determination will have to take into account, *inter alia*, the intelligence available to the decision maker, the urgency of the situation, and the harm likely to result to the operating forces or to persons and objects protected against direct attack from an erroneous decision.

The presumption of civilian protection does not exclude the use of armed force against civilians whose conduct poses a grave threat to public security, law and order without clearly amounting to direct participation in hostilities. In such cases, however, the use of force must be governed by the standards of law enforcement and of individual self-defence, taking into account the threat to be addressed and the nature of the surrounding circumstances.²⁰⁷

3. CONCLUSION

In practice, civilian direct participation in hostilities is likely to entail significant confusion and uncertainty in the implementation of the principle of distinction. In order to avoid the erroneous or arbitrary targeting of civilians entitled to protection against direct attack, it is therefore of particular importance that all feasible precautions be taken in determining whether a person is a civilian and, if so, whether he or she is directly participating in hostilities. In case of doubt, the person in question must be presumed to be protected against direct attack.

²⁰⁵ During the expert meetings, it was agreed that, in case of doubt as to whether a civilian constituted a legitimate military target, that civilian had to be presumed to be protected against direct attack (Report DPH 2005, pp. 44 f., 67 f.; Report DPH 2006, p. 70 ff.).

²⁰⁶ For situations of international armed conflict, this principle has been codified in Art. 50 [I] AP I. With regard to non-international armed conflicts, see also *Commentary AP* (above N 10), § 4789, which states that, “in case of doubt regarding the status of an individual, he is presumed to be a civilian”.

²⁰⁷ See also Report DPH 2005, pp. 11 f.

IX. RESTRAINTS ON THE USE OF FORCE IN DIRECT ATTACK

In addition to the restraints imposed by international humanitarian law on specific means and methods of warfare, and without prejudice to further restrictions that may arise under other applicable branches of international law, the kind and degree of force which is permissible against persons not entitled to protection against direct attack must not exceed what is actually necessary to accomplish a legitimate military purpose in the prevailing circumstances.

Loss of protection against direct attack, whether due to direct participation in hostilities (civilians) or continuous combat function (members of organized armed groups), does not mean that the persons concerned fall outside the law. It is a fundamental principle of customary and treaty IHL that “[t]he right of belligerents to adopt means of injuring the enemy is not unlimited”.²⁰⁸ Indeed, even direct attacks against legitimate military targets are subject to legal constraints, whether based on specific provisions of IHL, on the principles underlying IHL as a whole, or on other applicable branches of international law.

I. PROHIBITIONS AND RESTRICTIONS LAID DOWN IN SPECIFIC PROVISIONS OF IHL

Any military operation carried out in a situation of armed conflict must comply with the applicable provisions of customary and treaty IHL governing the conduct of hostilities.²⁰⁹ These include the rules derived from the principles of distinction, precaution, and proportionality, as well as the prohibitions of denial of quarter and perfidy. They also include the restriction or prohibition of selected weapons and the prohibition of means and methods of warfare of a nature to cause superfluous injury

²⁰⁸ Article 22 H IV R. See also Article 35 [I] AP I: “In any armed conflict, the right of the Parties to the conflict to choose methods and means of warfare is not unlimited”.

²⁰⁹ See also Report DPH 2006, p. 76; Report DPH 2008, pp. 24, 29 ff.

or unnecessary suffering (*maux superflus*).²¹⁰ Apart from the prohibition or restriction of certain means and methods of warfare, however, the specific provisions of IHL do not expressly regulate the kind and degree of force permissible against legitimate military targets. Instead, IHL simply refrains from providing certain categories of persons, including civilians directly participating in hostilities, with protection from direct “attacks”, that is to say, from “acts of violence against the adversary, whether in offence or in defence”.²¹¹ Clearly, the fact that a particular category of persons is not protected against offensive or defensive acts of violence is not equivalent to a legal entitlement to kill such persons without further considerations. At the same time, the absence of an unfettered “right” to kill does not necessarily imply a legal obligation to capture rather than kill regardless of the circumstances.

2. THE PRINCIPLES OF MILITARY NECESSITY AND HUMANITY²¹²

In the absence of express regulation, the kind and degree of force permissible in attacks against legitimate military targets should be determined, first of all, based on the fundamental principles of military necessity and humanity, which underlie and inform the entire normative framework of IHL and, therefore, shape the context in which its rules must be interpreted.²¹³ Considerations of military necessity and humanity neither derogate from nor override the specific provisions of IHL, but

constitute guiding principles for the interpretation of the rights and duties of belligerents within the parameters set by these provisions.²¹⁴

Today, the principle of military necessity is generally recognized to permit “only that degree and kind of force, not otherwise prohibited by the law of armed conflict, that is required in order to achieve the legitimate purpose of the conflict, namely the complete or partial submission of the enemy at the earliest possible moment with the minimum expenditure of life and resources”.²¹⁵ Complementing and implicit in the principle of military necessity is the principle of humanity, which “forbids the infliction of suffering, injury or destruction not actually necessary for the accomplishment of legitimate military purposes”.²¹⁶ In conjunction, the principles of military necessity and of humanity reduce the sum total of permissible military action from that which IHL does not expressly prohibit to that which is actually necessary for the accomplishment of a legitimate military purpose in the prevailing circumstances.²¹⁷

²¹⁴ Report DPH 2008, pp. 7 f., 19 f. See also the statement of Lauterpacht that “the law on these subjects [i.e. on the conduct of hostilities] must be shaped – so far as it can be shaped at all – by reference not to existing law but to more compelling considerations of humanity, of the survival of civilisation, and of the sanctity of the individual human being” (cited in: *Commentary AP* (above N 10), § 1394).

²¹⁵ United Kingdom: Ministry of Defence, *The Manual of the Law of Armed Conflict* (Oxford: OUP, 2004), Section 2.2 (Military Necessity). Similar interpretations are provided in numerous other contemporary military manuals and glossaries. See, for example, NATO: *Glossary of Terms and Definitions* (AAP-6V), p. 2-M-5; United States: Department of the Army, *Field Manual 27-10* (1956), § 3; US Department of the Navy, *The Commander’s Handbook on the Law of Naval Operations*, NWP 1-14 M/MCWP 5-12-1/ COMDTPUB P5800.7A (2007), § 5.3.1, p. 5-2.; France: Ministry of Defence, *Triservice Manuel ZDv 15/2: Humanitarian Armés* (2001), pp. 86 f.; Germany: Federal Ministry of Defence, *Triservice Manual ZDv 15/2: Humanitarian Law in Armed Conflicts* (August 1992) § 130; Switzerland: Swiss Army, *Règlements 51.007/IV, Bases légales du comportement à l’engagement* (2005), § 160. Historically, the modern concept of military necessity has been strongly influenced by the definition provided in Art. 14 of the “Lieber Code”. (United States: *Adjutant General’s Office, General Orders No. 100*, 24 April 1863).

²¹⁶ United Kingdom, *Manual of the Law of Armed Conflict* (above N 215), Section 2.4 (Humanity). Although no longer in force, see also the formulation provided in: United States: Department of the Air Force, *Air Force Pamphlet, AFP 110-31* (1976), § 1-3 (2), p. 1-6. Thus, as far as they aim to limit death, injury or destruction to what is actually necessary for legitimate military purposes, the principles of military necessity and of humanity do not oppose, but mutually reinforce, each other. Only once military action can reasonably be regarded as necessary for the accomplishment of a legitimate military purpose, do the principles of military necessity and humanity become opposing considerations which must be balanced against each other as expressed in the specific provisions of IHL.

²¹⁷ See *Commentary AP* (above N 10), § 1395. See also the determination of the International Court of Justice that the prohibition on the use of means and methods of warfare of a nature to cause unnecessary suffering to combatants constitutes an intransgressible principle of international customary law and a cardinal principle of IHL, which outlaws the causation of “harm greater than that unavoidable to achieve legitimate military objectives”. See ICJ, *Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons*, 8 July 1996, § 78.

²¹⁰ See, for example, the prohibitions or restrictions imposed on the use of poison (Art. 23 [1] (a) H IV R; 1925 Geneva Protocol prohibiting asphyxiating, poisonous or other gases and analogous liquids, materials or devices), expanding bullets (1899 Hague Declaration IV/3) and certain other weapons (CCW-Convention and Protocols of 1980, 1995 and 1996, 1997 Mine Ban Convention, Convention on Cluster Munitions of 2008), as well as the prohibition of methods involving the denial of quarter (Art. 40 AP I; Art. 23 [1] (d) H IV R) and the resort to treachery or perfidy (Art. 23 [1] (b) H IV R; Art. 37 AP I). See also Report DPH 2006, p. 76; Report DPH 2008, pp. 18 f.

²¹¹ Article 49 [1] AP I.

²¹² During the expert meetings, Section IX.2. of the Interpretive Guidance remained highly controversial. While one group of experts held that the use of lethal force against persons not entitled to protection against direct attack is permissible only where capture is not possible, another group of experts insisted that, under IHL, there is no legal obligation to capture rather than kill. Throughout the discussions, however, it was neither claimed that there was an obligation to assume increased risks in order to protect the life of an adversary not entitled to protection against direct attack, nor that such a person could lawfully be killed in a situation where there manifestly is no military necessity to do so. For an overview of the relevant discussions see Report DPH 2004, pp. 17 ff.; Report DPH 2005, pp. 31 f., 44. ff., 50, 56 f., 67; Report DPH 2006, pp. 74-79; Report DPH 2008, pp. 7-32.

²¹³ See, most notably: *Commentary AP* (above N 10), § 1389.

While it is impossible to determine, *ex ante*, the precise amount of force to be used in each situation, considerations of humanity require that, within the parameters set by the specific provisions of IHL, no more death, injury, or destruction be caused than is actually necessary for the accomplishment of a legitimate military purpose in the prevailing circumstances.²¹⁸ What kind and degree of force can be regarded as necessary in an attack against a particular military target involves a complex assessment based on a wide variety of operational and contextual circumstances. The aim cannot be to replace the judgment of the military commander by inflexible or unrealistic standards; rather it is to avoid error, arbitrariness, and abuse by providing guiding principles for the choice of means and methods of warfare based on his or her assessment of the situation.²¹⁹

In classic large-scale confrontations between well-equipped and organized armed forces or groups, the principles of military necessity and of humanity are unlikely to restrict the use of force against legitimate military targets beyond what is already required by specific provisions of IHL. The practical importance of their restraining function will increase with the ability of a party to the conflict to control the circumstances and area in which its military operations are conducted, and may become decisive where armed forces operate against selected individuals in situations comparable to peacetime policing. In practice, such considerations

are likely to become particularly relevant where a party to the conflict exercises effective territorial control, most notably in occupied territories and non-international armed conflicts.²²⁰

For example, an unarmed civilian sitting in a restaurant using a radio or mobile phone to transmit tactical targeting intelligence to an attacking air force would probably have to be regarded as directly participating in hostilities. Should the restaurant in question be situated within an area firmly controlled by the opposing party, however, it may be possible to neutralize the military threat posed by that civilian through capture or other non-lethal means without additional risk to the operating forces or the surrounding civilian population. Similarly, under IHL, an insurgent military commander of an organized armed group would not regain civilian protection against direct attack simply because he temporarily discarded his weapons, uniform and distinctive signs in order to visit relatives inside government-controlled territory. Nevertheless, depending on the circumstances, the armed or police forces of the government may be able to capture that commander without resorting to lethal force. Further, large numbers of unarmed civilians who deliberately gather on a bridge in order to prevent the passage of governmental ground forces in pursuit of an insurgent group would probably have to be regarded as directly participating in hostilities. In most cases, however, it would be reasonably possible for the armed forces to remove the physical obstacle posed by these civilians through means less harmful than a direct military attack on them.

218 See also the Declaration of St. Petersburg (1868), which states: "That the only legitimate object which States should endeavour to accomplish during war is to weaken the military forces of the enemy; That for this purpose it is sufficient to disable [original French version: *mettre hors de combat*] the greatest possible number of men".

219 It has long been recognized that matters not expressly regulated in treaty IHL should not, "for want of a written provision, be left to the arbitrary judgment of the military commanders" (Preamble H; I; Preamble H IV) but that, in the words of the famous Martens Clause, "civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience" (Art. 1 [2] AP I). First adopted in the Preamble of Hague Convention II (1899) and reaffirmed in subsequent treaties and jurisprudence for more than a century, the Martens Clause continues to serve as a constant reminder that, in situations of armed conflict, a particular conduct is not necessarily lawful simply because it is not expressly prohibited or otherwise regulated in treaty law. See, e.g., Preambles H IV R (1907), AP II (1977), CCW (1980); Arts 63 GC I, 62 GC II, 142 GC III, 158 GC IV (1949); ICJ, *Nuclear Weapons AO* (above N 217), § 78; ICTY, *Prosecutor v. Kupreskic et al.*, Case No. IT-95-16-T-14, Judgment of January 2000, § 525). For the discussion on the Martens Clause during the expert meetings, see Report DPH 2008, pp. 22 f.).

220 For recent national case law reflecting this position see: Israel HCJ, *PCATI v. Israel*, above N 24, § 40, where the Court held that "a civilian taking a direct part in hostilities cannot be attacked at such time as he is doing so, if a less harmful means can be employed. [...] Arrest, investigation, and trial are not means which can always be used. At times the possibility does not exist whatsoever; at times it involves a risk so great to the lives of the soldiers, that it is not required [...] It might actually be particularly practical under the conditions of belligerent occupation, in which the army controls the area in which the operation takes place, and in which arrest, investigation, and trial are at times realizable possibilities [...] Of course, given the circumstances of a certain case, that possibility might not exist. At times, its harm to nearby innocent civilians might be greater than that caused by refraining from it. In that state of affairs, it should not be used".

In sum, while operating forces can hardly be required to take additional risks for themselves or the civilian population in order to capture an armed adversary alive, it would defy basic notions of humanity to kill an adversary or to refrain from giving him or her an opportunity to surrender where there manifestly is no necessity for the use of lethal force.²²¹ In such situations, the principles of military necessity and of humanity play an important role in determining the kind and degree of permissible force against legitimate military targets. Lastly, although this Interpretive Guidance concerns the analysis and interpretation of IHL only, its conclusions remain without prejudice to additional restrictions on the use of force, which may arise under other applicable frameworks of international law such as, most notably, international human rights law or the law governing the use of interstate force (*jus ad bellum*).²²²

3. CONCLUSION

In situations of armed conflict, even the use of force against persons not entitled to protection against direct attack remains subject to legal constraints. In addition to the restraints imposed by IHL on specific means and methods of warfare, and without prejudice to further restrictions that may arise under other applicable branches of international law, the kind and degree of force which is permissible against persons not entitled to protection against direct attack must not exceed what is actually necessary to accomplish a legitimate military purpose in the prevailing circumstances.

221 It is in this sense that Pictet's famous statement should be understood that "[i]f we can put a soldier out of action by capturing him, we should not wound him; if we can obtain the same result by wounding him, we must not kill him. If there are two means to achieve the same military advantage, we must choose the one which causes the lesser evil". See Pictet, *Development and Principles of International Humanitarian Law* (Dordrecht, Nijhoff 1985), pp. 75 f. During the expert meetings, it was generally recognized that the approach proposed by Pictet is unlikely to be operable in classic battlefield situations involving large-scale confrontations (Report DPH 2006, pp. 75 f., 78) and that armed forces operating in situations of armed conflict, even if equipped with sophisticated weaponry and means of observation, may not always have the means or opportunity to capture rather than kill (Report DPH 2006, p. 63).

222 According to Art. 51 [1] AP I the rule expressed in Art. 51 [3] AP I is "additional to other applicable rules of international law". Similarly, Art. 49 [4] AP I recalls that the provisions of Section I AP I (Arts 48-67) are "additional to the rules concerning humanitarian protection contained [...] in other international agreements binding upon the High Contracting Parties, as well as to other rules of international law relating to the protection of civilians [...] against the effects of hostilities". While these provisions refer primarily to sources of IHL other than AP I itself, they also aim to include "instruments of more general applicability that continue to apply wholly or partially in a situation of armed conflict" (see *Commentary AP* (above N 10), §§ 128-131), such as "the regional and universal Conventions and Covenants relating to the protection of human rights" (*ibid.*, Commentary Art. 49 AP I, § 1900) and other applicable treaties, which "can have a positive influence on the fate of the civilian population in time of armed conflict" (*ibid.*, Commentary Art. 51 [1] AP I, § 1937). During the expert meetings, some experts suggested that the arguments made in Section IX should be based on the human right to life. The prevailing view was, however, that the Interpretive Guidance should not examine the impact of human rights law on the kind and degree of force permissible under IHL. Instead, a general savings clause should clarify that the text of the Interpretive Guidance was drafted without prejudice to the applicability of other legal norms, such as human rights law (Report DPH 2006, pp. 78 f.; Report DPH 2008, p. 21 f.).

X. CONSEQUENCES OF REGAINING CIVILIAN PROTECTION

International humanitarian law neither prohibits nor privileges civilian direct participation in hostilities. When civilians cease to directly participate in hostilities, or when members of organized armed groups belonging to a non-State party to an armed conflict cease to assume their continuous combat function, they regain full civilian protection against direct attack, but are not exempted from prosecution for violations of domestic and international law they may have committed.

1. LACK OF IMMUNITY FROM DOMESTIC PROSECUTION

IHL provides an express "right" to directly participate in hostilities only for members of the armed forces of parties to international armed conflicts and participants in a *levée en masse*.²²³ This right does not imply an entitlement to carry out acts prohibited under IHL, but merely provides combatants with immunity from domestic prosecution for acts which, although in accordance with IHL, may constitute crimes under the national criminal law of the parties to the conflict (the so-called combatant privilege).²²⁴ The absence in IHL of an express right for civilians to directly participate in hostilities does not necessarily imply an international prohibition of such participation. Indeed, as such, civilian direct participation in hostilities is neither prohibited by IHL²²⁵ nor criminalized

223 Art. 43 [2] AP I (except medical and religious personnel); Arts 1 and 2 HIV R.

224 Conversely, combatant privilege provides no immunity from prosecution under international or national criminal law for violations of IHL.

225 This was also the prevailing view during the expert meetings (see Report DPH 2006, p. 81). The experts also agreed that the legality or illegality of an act under national or international law is irrelevant for its qualification as direct participation in hostilities (Background Doc. DPH 2004, p. 26; Report DPH 2004, p. 17; Report DPH 2005, p. 9; Report DPH 2006, p. 50).

under the statutes of any prior or current international criminal tribunal or court.²²⁶ However, because civilians – including those entitled to prisoner of war status under Article 4 [4] and [5] GC III – are not entitled to the combatant privilege, they do not enjoy immunity from domestic prosecution for lawful acts of war, that is, for having directly participated in hostilities while respecting IHL.²²⁷ Consequently, civilians who have directly participated in hostilities and members of organized armed groups belonging to a non-State party to a conflict²²⁸ may be prosecuted and punished to the extent that their activities, their membership, or the harm caused by them is penalized under national law (as treason, arson, murder, etc.).²²⁹

2. OBLIGATION TO RESPECT IHL

The case law of international military tribunals that followed the Second World War,²³⁰ the ICTY and the ICTR consistently affirms that even individual civilians can violate provisions of IHL and commit war crimes. It is the character of the acts and their nexus to the conflict, not the status of the perpetrator, that are decisive for their relevance under IHL.²³¹ There can be no doubt that civilians directly participating in hostilities must respect the rules of IHL, including those on the conduct of hostilities, and may be held responsible for war crimes just like members of State armed

forces or organized armed groups. For example, it would be a violation of IHL if civilians were to direct hostile acts against persons and objects protected against direct attack, to deny quarter to adversaries hors de combat, or to capture, injure or kill an adversary by resort to perfidy.

In practice, the prohibition on perfidy is of particular interest, as civilians directly participating in hostilities often do not carry arms openly or otherwise distinguish themselves from the civilian population. When civilians capture, injure, or kill an adversary and in doing so they fail to distinguish themselves from the civilian population in order to lead the adversary to believe that they are entitled to civilian protection against direct attack, this may amount to perfidy in violation of customary and treaty IHL.²³²

3. CONCLUSION

In the final analysis, IHL neither prohibits nor privileges civilian direct participation in hostilities. Therefore, when civilians cease to directly participate in hostilities, or when individuals cease to be members of organized armed groups because they disengage from their continuous combat function, they regain full civilian protection against direct attack. However, in the absence of combatant privilege, they are not exempted from prosecution under national criminal law for acts committed during their direct participation or membership. Moreover, just like members of State armed forces or organized armed groups belonging to the parties to an armed conflict, civilians directly participating in hostilities must respect the rules of IHL governing the conduct of hostilities and may be held individually responsible for war crimes and other violations of international criminal law.

226 Neither the statutes of the Military Tribunals that followed the Second World War (i.e. the International Military Tribunal in Nuremberg and the International Military Tribunal for the Far East in Tokyo), nor the current statutes of the ICTY, the ICTR, the ICC and the Special Court for Sierra Leone (SCSL) penalize civilian direct participation in hostilities as such.

227 The Martens Clause (above N 219) expresses a compromise formulated after the States participating in the 1899 Peace Conference had been unable to agree on whether civilians taking up arms against an established occupying power should be treated as privileged combatants or as *franc-tireurs* subject to execution. Since then, States have successively extended the combatant privilege to participants in a *levée en masse*, militias and volunteer corps (H IV R, 1907), organized resistance movements (GC I-III, 1949) and certain national liberation movements (AP I, 1977). As far as civilians are concerned, however, IHL still neither prohibits their direct participation in hostilities, nor affords them immunity from domestic prosecution.

228 Obviously, where Additional Protocol I is applicable, members of the armed forces of national liberation movements within the meaning of Article 1 [4] AP I would benefit from combatant privilege and, thus, from immunity against prosecution for lawful acts of war, even though the movements to which they belong are non-State parties to an armed conflict.

229 See also Background Doc. DPH 2004, p. 26; Report DPH 2004, p. 17; Report DPH 2005, p. 9; Report DPH 2006, pp. 80 f.

230 See above N 226.

231 For the nexus criterion as established by the ICTY and the ICTR see, most notably, ICTY, *Prosecutor v. Tadić*, Interlocutory Appeal (above N 26), §§ 67, 70; ICTY, *Prosecutor v. Kunarac et al.* (above N 147), §§ 55 ff.; ICTR, *Prosecutor v. Rutaganda* (above N 147), §§ 569 f.

232 Arts 23 [1] (b) H IV R; 37 [1] AP I (international armed conflict). For the customary nature of this rule in non-international armed conflict, see *Customary IHL*, above N 7, Vol. I, Rule 65. Under the ICC statute, the treacherous killing or wounding of “individuals belonging to the hostile nation or army” (international armed conflict: Art. 8 [2] (b) (xi)) or of a “combatant adversary” (non-international armed conflict: Art. 8 [2] (e) (ix)) is a war crime.

